

## REGULATORY GOVERNANCE IN SOUTH EAST EUROPEAN COUNTRIES

### PROGRESS AND CHALLENGES



**JULY 2004**

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**ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT**



**The Stability Pact for South Eastern Europe** is a political declaration and framework agreement adopted in June 1999 to encourage and strengthen co-operation among the countries of South East Europe (SEE) and to facilitate, co-ordinate and streamline efforts to ensure stability and economic growth in the region. (see [www.stabilitypact.org](http://www.stabilitypact.org))

**The South East Europe Compact for Reform, Investment, Integrity and Growth (“The Investment Compact”)** is a key component of the Stability Pact under Working Table II on Economic Reconstruction, Development and Co-operation. Private investment is essential to facilitate the transition to market economy structures and to underpin social and economic development. The Investment Compact promotes and supports policy reforms that aim to improve the investment climate in South East Europe and thereby encourage investment and the development of a strong private sector. The main objectives of the Investment Compact are to:

- Improve the climate for business and investment;
- Attract and encourage private investment;
- Ensure private sector involvement in the reform process;
- Instigate and monitor the implementation of reform.

The participating SEE countries in the Investment Compact are: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Republic of Macedonia, Moldova, Romania, Serbia and Montenegro. Building on the core principle of the Investment Compact that “ownership” of reform rests within the region itself, the Investment Compact seeks to share the long experience of OECD countries. It provides region-wide peer review and capacity building through dialogue on successful policy development and ensures identification of practical steps to implement reform and transition.

The work of the Investment Compact has been actively supported and financed by seventeen OECD Member countries: **Austria, Belgium, Czech Republic, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Norway, Sweden, Switzerland, Turkey, United Kingdom, United States and the European Commission.** (see [www.investmentcompact.org](http://www.investmentcompact.org))

## ACKNOWLEDGEMENTS

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Part I of the report builds on the results of the March 2004 *Review of Regulatory Governance in SEE* carried out by the RGI in co-operation with the network of independent consultants in the region. The questionnaire for the SEE Review benefited from comments by Anke Freibert. We thank the following consultants for their contributions to the report: Albania, Elida Recic; Bosnia and Herzegovina, Boris Divjak; Bulgaria, Ivaylo Nikolov; Croatia, Boris Divjak; Macedonia, Zivko Dimov; Moldova, Igor Munteanu, Veaceslav Ionita; Romania, Romanian Center for Economic Policies, Alexandru Ene, Raluca Mitrea and Dragos Paslaru; Serbia, Slavica Penev and Montenegro, Petar Ivanovic.

Part II of this report has been prepared based on the *Governance Action Plans* drawn by the SEE governments. The whole report benefited from guidance and comments of the members of the Steering Group on Regulatory Governance, including SEE country officials, representatives of business and academia. The report also draws on recent information generated by the Stability Pact, EBRD, FIAS, OECD/SIGMA and the World Bank.

The assessments and views expressed in this report are those of the Regulatory Governance Initiative under the Investment Compact and do not necessarily reflect the views of the OECD and its Member countries.

The report, as well as other RGI related information are made available on the web page of the Regulatory Governance Initiative ([www.oecd.org/regreform](http://www.oecd.org/regreform)) and the Investment Compact ([www.investmentcompact.org](http://www.investmentcompact.org)).

## FOREWORD

This report of the Regulatory Governance Initiative (RGI) provides an assessment on the progress of regulatory governance reforms in South East Europe (SEE), and the remaining reform challenges. Prepared as part of the Regulatory Governance Initiative of the Investment Compact (RGI), it includes the *Governance Action Plans* developed by the SEE countries. Short-term reform priorities identified by the countries provide the basis for the *Agenda for Regional Action*, an overview of main governance reform trends in the SEE region and recommendations for the successful implementation of reforms.

The report responds to the decision, taken by the Ministers from South East Europe (SEE) at the meeting in Vienna in July 2003, to place major emphasis on reviewing progress in the area of governance at their 2004 Ministerial meeting. It aims to inform policy-makers, donors, investors and the international community of progress in regulatory governance reforms in South East Europe. Practitioners in the region can draw on this report as a guide for their work in the future.

SEE countries have made good progress across a broad front of regulatory governance issues, but they still need to address major challenges to improve the quality of the regulatory environment and to take the lead in creating an attractive environment for foreign and national investors in their region. The OECD country experiences show that to be effective, a regulatory policy needs to encompass three basic and mutually reinforcing elements: a policy, an institution and a strategy for using regulatory tools. Doing this effectively and efficiently is the major challenge in creating a new regulatory culture. The SEE countries are following the path taken by many OECD countries to enhance economic efficiency, innovation and competitiveness through regulatory reforms that reduce undue burdens on business, increase the transparency of regulatory regimes and support entrepreneurship and investment. These reforms are essential for improving investment conditions and promoting democratic practices and closer integration with Europe.

OECD recommends that governments adopt broad policies with clear objectives and frameworks for implementation. Now that the SEE governments have embraced governance reforms, the report encourages them to consider a more comprehensive approach for enhancing the overall consistency, transparency and quality of the regulatory governance framework, supported by an overarching regulatory policy agenda adopted at the highest level of government. These elements are all key to raising the confidence of private investors in the region and to reducing the informal sector.

The RGI intends to assist the countries in further implementation of reforms. In particular, implementation of the *Governance Action Plans* will be regularly monitored, and the Investment Compact will provide the Ministers of the region with a report on progress achieved at their 2005 Annual Meeting.

The report benefited from the discussions held during the *Steering Group on Regulatory Governance*, bringing together the views of the SEE country representatives, business, academia and international organisations present in the region. We would like to express our appreciation to all OECD and South East European participants for their excellent partnership and contributions to the process.

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## SUMMARY AND MAIN CONCLUSIONS

1. In October 2001, the Stability Pact and the OECD launched the Regulatory Governance Initiative (RGI) to strengthen the institutional, knowledge and process capacities for developing and implementing more efficient and effective regulation, supportive of sound and competitive markets.

2. The RGI is one of the policy implementation initiatives under the Investment Compact (the South East Europe Compact for Reform, Investment, Integrity and Growth) of the Stability Pact. The **Stability Pact** was adopted in 1999 by 40 partner countries and organisations to strengthen the SEE countries “in their efforts to develop a comprehensive, long-term conflict prevention strategy that will support cooperation, economic growth and peace”. The **Investment Compact** was established in February 2000 as a key component of the Stability Pact, under Working Table II on Economic Reconstruction, Development and Co-operation. The Investment Compact aims at improving the region's economic and business environment by laying the structural policy foundations for sustainable growth and reform so as to create a robust market economy and encourage private investment.

3. The implementation initiatives are agreed actions taken as part of the Investment Compact on a co-ordinated regional basis aimed at creating an enabling environment for investment and sound infrastructure for private sector investment. These initiatives seek to provide *incremental and accelerated* action on policy reform, complementing other bilateral and multilateral activities in the region. They are demand-driven and reflect priorities identified by SEE countries and the private sector. They combine policy dialogue with practical experience sharing and capacity building. The Investment Compact work is always conducted in joint collaboration with other international organisations or individual donor countries.

4. Complementing other implementation initiatives, the RGI was launched to strengthen the regulatory and administrative dimension in the SEE region. The RGI builds on the key Regulatory Quality Concept, which assumes a proactive role of government in establishing effective, market-oriented, regulatory, competition, trade and investment regimes and institutions, as well as high standards of social and environmental protection. This approach is based on two pillars<sup>1</sup>:

- Economic development through liberalisation, privatisation, selective de-regulation and re-regulation, and
- Good governance through efficient, transparent and accountable government policies and institutions to protect consumers and achieve social and environmental goals.

5. A fundamental objective of regulatory governance is to foster high quality regulation that will improve the efficiency of national economies, their attractiveness in terms of FDI and their ability to adapt to change and to remain competitive. The reforms are designed to eliminate the substantial compliance costs on businesses, which are generated by low quality regulations. Poor quality regulations prevent healthy competition and reduce opportunities for investment and trade. By helping to attract FDI, good regulatory governance encourages entrepreneurship and market entry, and contributes to long-term economic prosperity and stability. As competition for FDI in global markets intensifies among recipient countries, the direct and indirect costs of inefficient governance cannot be ignored.

6. Countries in South East Europe (SEE) have increasingly recognised that high-quality regulation (at the national, regional and local level) is a precondition for effectively responding to a range of key challenges. This was reflected in the Ministerial Declaration *Attracting Investment to South East Europe: Common Principles and*

*Best Practices* signed in Vienna, 18 July 2002. The Declaration acknowledged that “sustained and intensified efforts are needed within the framework of the Investment Compact to implement economic, legal, and administrative reforms and to provide for good governance structures, which are essential for creating confidence in public administration and the efficient functioning of markets and enterprises”. The RGI has served these goals by assisting the signatory countries when implementing the principles identified in the Declaration, with a view to fostering a favourable climate for both international and regional investment.

7. A year later, the Ministerial Statement, *Pushing Ahead with Reform: Removing Obstacles to FDI in South East Europe*, adopted in Vienna in July 2003 at the 2<sup>nd</sup> annual Ministerial Meeting of the Investment Compact, further recognized that governance issues should play a more central role in government policy and affirmed that the 2004 meeting will place major emphasis on reviewing progress achieved in this area. To this end, and at the proposal of the Romanian co-chair of the Investment Compact, SEE country representatives agreed to establish a *Steering Group on Regulatory Governance* under the co-ordination of the RGI. The Steering Group has been leading the Investment Compact process to focus on accelerating regulatory governance reforms.

### Scope of the report

8. The objective of this report is to provide SEE Ministers meeting in Vienna in July 2004 with background for a political commitment to regulatory governance reforms in their countries to be reflected in the 2004 Ministerial Statement of the Investment Compact.

9. The first part of the report is an **assessment of the current “state of play”** of regulatory governance and policies in SEE countries<sup>2</sup>. It establishes important lessons and looks at newly emergent best practices and tools. It highlights key drivers of reform as well as important barriers to change. Most importantly, it takes a dynamic and forward-looking view, focusing on the key priorities to promote the regulatory policy agenda.

10. The second part of the report – **Agenda for Regional Action** – gives an overview of the countries *Top Policy Priorities*, i.e. reforms that the countries themselves consider as their most immediate priorities for action linked to the improvement of the regulatory environment in their countries. Short-term goals, as well as contexts and measures for the implementation of these priorities, are taken into account for each country and compared against the current “state of play”.

11. Individual country choices of Top Policy Priorities identified for their Governance Action Plans show a rather heterogeneous picture across countries depending on the historical background, stage of transition, level of integration with the European Union, etc. Most of the reform focus across the region seems to be

### Classification of Top Policy Priorities

	Institutional capacity building	Information and consultations	Enhancing quality of regulation	Administrative burden reduction	Fostering efficient appeals
Albania		X			X
BiH			X		X
Bulgaria		X		X	
Croatia	X			X	
Republic of Macedonia	X	X	X		
Moldova				X	
Romania				X	
Montenegro	X			X	X
Serbia			X	X	X

Source: SEE Governance Action Plans, April 2004

on deregulation, where quick and easily measurable results can be shown (such as administrative simplification, reform of licenses and permits). The reforms of judiciary systems also receive significant attention, aiming at improving the enforcement of contracts, thus enhancing the rule of law. Comprehensive regulatory governance strategies are still lacking, as shown by the very low priority given to both the quality of regulation and strengthening of effective oversight capacities to improve the speed, effectiveness and coherence of regulatory reforms.

### ***Evaluating regulatory policies***

12. An important element when evaluating the quality of regulatory policies consists of differentiating between the inputs, outputs and outcomes of the policy. From an **input** viewpoint, a government needs to enact new laws and set up policies, institutions and tools. However, this is not sufficient. This new framework of capacities needs to be implemented, enforced and ultimately deliver results to be deemed successful. The political will needs to be tested in the face of opposition from public and private interests. The institutions need to have the human and budgetary resources that are necessary and adequate to apply the policies and tools. A second array of tests thus focuses on the **outputs** of the policy and raises the question as to whether the inputs have produced better quality regulations. Finally, governments and institutions need to implement and enforce the tools to achieve concrete results for citizens and businesses, in other words, the new capacities needed to produce the **outcomes**. The latter includes higher investment, including foreign direct investment, economic growth, a better quality natural environment, increased social welfare, etc.

13. The report focuses mainly on evaluating the **inputs** (i.e. the quality of the policy, institutions and tools) and the **outputs** (i.e. the compliance and enforcement of these policies). It offers an opportunity to discuss outcome targets and analyses whether the current policy and governance settings help achieve them.

### ***Fostering investment through regulatory governance***

14. Good regulatory governance is a prerequisite for well-functioning markets and, hence, for attracting investments with a sustainable allocation of investment capital. In addition, transparent, accountable and efficient policies make an important difference in economic performance. Better policies tend to strengthen the relationship with foreign investors and improve the level of mutual trust, thereby encouraging investors to reinvest in the domestic economy. By contrast, excessive or poorly designed government regulation remains a serious problem, often engendering corruption, rent seeking and a large hidden economy.

15. Good regulatory governance facilitates governmental accountability, efficiency, participation and predictability of outcomes for public decisions. These are core principles of investment policies and rules given the relative irreversibility of many investments. These rules should reduce the scope for providing discretionary powers to government officials. Accountability is needed to make sure that rules are actually complied with and are complemented by a reliable and fast system of legal appeals. Similarly, transparency and information openness cannot be assured without legal frameworks that balance the right to disclosure against the right of confidentiality, and without institutions that accept accountability.

## **CONCLUSIONS AND POLICY RECOMMENDATIONS**

16. SEE governments have embraced regulatory reforms and started to adopt good regulatory governance practices to implement them. Up to now, they have pursued reforms through a list of actions to be achieved. This 'item-by-item' approach has been helpful to push structural and sectoral reforms in the region. However, this approach has its limits. It impairs the forging of a coherent vision about where to go and what sequence to follow. It also hinders the emergence of a new regulatory culture across the administration. An encompassing multi-year regulatory strategy supported at a high political level can be

helpful in moving reforms further. Many states in the region already have regulatory oversight bodies<sup>3</sup> that can be expanded and developed into strong institutions to drive reforms. International co-operation and co-ordination can strengthen this type of top down approach. As the OECD regulatory reform programme has demonstrated, individual efforts can be improved and sustained through collective monitoring and peer pressure. This can be of particular help in building political support internally and externally and cross-sharing best practice and solutions.

17. The conclusions and policy recommendations have been prepared by the OECD Secretariat based on the findings of Part 1 of the Report and the individual country reform priorities contained in the Action Plans discussed in Part 2 of the Report and presented in the overview table below. They have also benefited from the discussions of the Steering Group on Regulatory Governance, bringing together the views of the SEE country representatives, business, academia and international organisations present in the region. Among the findings of the report the following policy recommendations should be mentioned as especially pertinent to the SEE region:

***Building institutional capacity at central and local government level to support regulatory efforts***

18. Further efforts to improve institutional capacity at central and local government levels will help to address the broad challenges of reforms. Capacity building may involve reinforcing or establishing bodies charged with implementation and coordination of regulatory reforms and with an oversight function in terms of regulatory quality. In particular, the report recommends investing in developing institutional capacity of a body encompassing regulatory quality and co-ordinating functions.

***Increasing further the availability of information on regulation***

19. Important efforts have to be undertaken to enhance the overall transparency of the regulatory environment, noting that transparency serves better compliance with the rule of law and reduces corruption.

***Strengthening consultation procedures and impact assessment tools that lead to better targeted regulations***

20. In undertaking important reforms, countries may consider the use of proven tools which improve the quality of new regulations. This might involve setting up procedures for Regulatory Impact Analysis (see paragraphs 86, 87) and applying it to major pieces of primary regulation, as well as enhancing consultations with stake-holders.

***Reducing administrative burdens on business, and simplifying registration formalities***

21. SEE countries have achieved important progress in this area. However, efforts still need to be made to streamline administrative procedures further and reduce administrative barriers for entrepreneurs, noting in particular that the largest burden, in relative terms, is borne by small and medium-sized enterprises. This could include further reductions of the numbers of licenses and permits and facilitating company registration, in line with EU regulations.

***Fostering efficient complaint and appeal procedures***

22. Certain steps are already initiated or planned by countries in this area. The possibilities of fair, transparent and efficient judicial recourse will be served best by ambitious reforms of the judiciary system as a whole. Efficient judiciary systems are the ultimate guarantors of accountability, regulatory quality and proper enforcement of the rule of law.

## Overview of Top Policy Priorities from the 2004 Governance Action Plans of SEE Countries

### Institutional capacity building

- Creating an enabling (*institutional*) investment environment Croatia
- Improving efficiency of Public Administration (*policy co-ordination and communication capacity*) Croatia
- Further build engines of reform, through strengthening of a Regulatory Governance Authority (*Legislative Secretariat*) Rep. of Macedonia
- Continue the reform and modernization of the Public Administration (*capacity of the civil service*) Montenegro

### Enhancing access to information and consultations

- Establishment of information offices for the private sector Albania
- Strengthening and further development of the collaboration network with private sector Albania
- Increase the diversity of e-government services Bulgaria
- Improve transparency by strengthening of mandatory public consultation provisions Rep. of Macedonia

### Enhancing quality of regulation

- Introduce Regulatory Impact Analysis BiH
- Continue and improve implementation of RIA in Macedonian legislative procedure Rep. of Macedonia
- Reduce the backlog of legislation (*draft legislation pending adoption by the Parliament*) Serbia

### Reducing administrative burdens on business

- Set the regulatory basis related with the administrative regulation and the administrative control in compliance with the Law on Reduction of Administrative Regulation and Administrative Control of Economic Activity Bulgaria
- Removal of administrative barriers to investments (*development and implementation of a new FIAS study*) Croatia
- Improve activity of control authorities Moldova
- Streamline provision of paid services to market agents (*minimize the number and fees*) Moldova
- Optimize authorization system for company start-ups Moldova
- Continuing the reform process aiming to simplify the formalities concerning registration and authorizing (licensing) of companies Romania
- Exercising periodical (annual) surveys to monitor and evaluate the impact of the governmental regulations on business environment aiming to reduce the administrative barriers for investors Romania
- Reduce the administrative barriers at the firms' exit from the market –implementation of the updated legislation concerning bankruptcy and commercial litigations Romania
- Adopt and implement the Action Plan for the Removal of Administrative Barriers (*focus on implementation capacity and measures*) Serbia
- Simplify administrative procedures (*in licensing, import-export and company start-ups*) Montenegro

### Fostering efficient appeal possibilities

- Improvement of complaint system within regulatory bodies (*harmonizing complaint procedures in all regulatory bodies*) Albania
- Adopt and implement legislation establishing a single High Judicial and Prosecutorial Council for BiH BiH
- Assume full national responsibility for the State Ombudsman and make progress on the merger of the State and Entity Ombudsmen BiH
- Increase efficiency of the judiciary (*focus on implementation of new laws*) Serbia
- Improve judiciary system (*focus on implementation of new laws and implementation capacity*) Montenegro

## NOTES

1. The 1995 OECD Council **Recommendation on Improving the Quality of Government Regulation** established the first international standard on regulatory quality through its 10 point **Reference Checklist for Regulatory Decision-Making**. It formally acknowledged a shift in approaches and objectives from making *ad hoc* improvements to regulatory structures to taking a systematic view of regulatory quality, and means to promote and enhance it.
2. In this report the Republics of Serbia and Montenegro respectively, part of the State Union of Serbia and Montenegro are treated separately as their policy concerning regulatory governance is largely elaborated and implemented autonomously by each of the two republics.
3. Most of them – discussed in more detail in section 1.2 of the report – are of quite recent creation. Their powers as a rule include advocacy for reforming existing regulations or challenging new regulations proposed by other government bodies and reporting progress in the policies. Many of them were originally created with FIAS support to implement Administrative Barriers Reduction programmes, but new institutional practices emerge as well, such as Serbia's Council for Regulatory Reform.

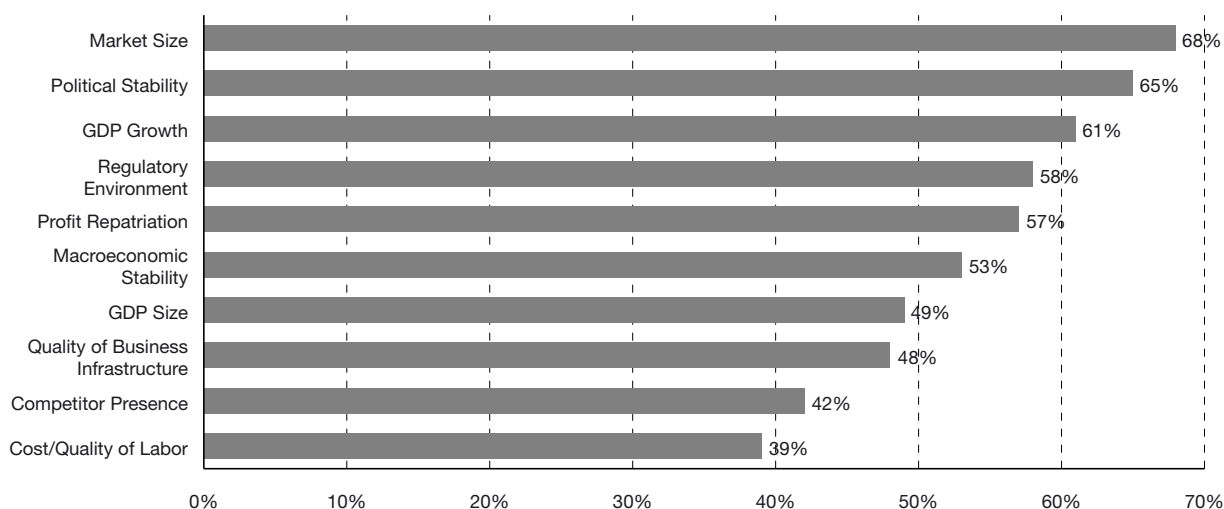
## PROGRESS AND CHALLENGES OF REGULATORY GOVERNANCE ACROSS SEE COUNTRIES: A REGIONAL ASSESSMENT

### 1.1 The Role of Regulatory Policies

*The quality of regulations continues to be one of the most challenging issues in the SEE Region*

23. Figure 1 indicates that the quality of regulation is the fourth most important obstacle for investment and thus growth in the region. Importantly, this key determinant depends mostly on individual and sovereign political will of the governments rather than external factors in the world economy. Most other variables indeed are either subject to geography or to the cooperation of nations in the region.

Figure 1. Top Determinants of FDI in SEE countries



Source: FDI Confidence Index, AT Kearney

*Improving regulatory policies enhances economic growth and public governance*

24. Many studies, including those from OECD, have shown that there are positive links between high quality regulation, economic growth and good governance. Lower regulatory burdens for citizens and governments promote economic sustainable development. Regulatory policies that enhance competition and reduce regulatory costs can boost efficiency, bring down prices and stimulate innovation. Reform that reduces business burdens and increases the transparency of regulatory regimes supports entrepreneurship, market entry and economic growth that, in turn, attract foreign and domestic investors. High quality regulation also provides governments with policy instruments to achieve social and environmental goals, aligning better public and private interests in markets.



25. However, a significant time lag – sometimes as long as a decade - between the implementation of a quality regulatory policy and the corresponding economic and governance outcomes can discourage reformers. Nonetheless, the experiences of OECD countries such as Australia, the USA, the UK, the Netherlands or Finland show that a clear relationship exists and that results are attained when perseverance and patience to push through reforms are sustained.

26. A successful regulatory policy should be valued principally in terms of reducing the risks of failures. It is always hard to estimate the cost of not reforming regulatory policies or the benefits forgone by avoiding proper public consultation or impact analyses. But these costs exist, and if reform is delayed, they only increase. The option of doing nothing is not free.

### **Quality regulatory policy and governance**

27. Recent evidence from OECD clearly shows that sound regulatory policies, institutions and tools are becoming vital to produce economic and social outcomes.<sup>4</sup> Since the mid-1990s, OECD has developed concepts,<sup>5</sup> differentiating the government's exclusive action from the confluence of actions of partners beyond the government. A **regulatory policy** is an explicit policy aiming at continuously improving the quality of the regulatory environment via efficient use of government's regulatory powers. A regulatory policy is based on screening regulations and formalities to identify those that are outdated or ineffective; streamlining and simplifying those that are needed; using a wider range of market incentives and more flexible and international regulatory approaches; and introducing greater discipline, co-ordination and transparency within regulatory processes. Those policies prompt commitment to reform, sustain transparency, and promote consistency and co-ordination between the different components of reform.

28. On the other hand, **regulatory governance** is a systemic concept. It involves developing and implementing state-wide relationships and procedures framing the ways and means by which authorities and governments use their regulatory powers. Regulatory governance goes beyond the executive branch of the state and involves the participation of parliament, the judiciary and subnational authorities among other stakeholders to assure that the rule of law is reinforced.

#### **Box 1. The 1995 and 1997 OECD Recommendations on Regulatory Quality**

In March 1995, the Council of the OECD adopted the Recommendation on Improving the Quality of Government Regulation (reproduced in Annex 1). It is the first international standard on regulatory quality. The Recommendation marked the formal acknowledgement of a shift in approaches and objectives from making ad hoc improvements to regulatory structures that take a systematic view of regulatory quality and the means of promoting and enhancing it.

As a core element, the Recommendation developed a Reference Checklist for Regulatory Decision-Making organized around 10 fundamental regulatory quality principles. Good regulation should: (i) be needed to serve clearly identified policy goals and effective in achieving those goals; (ii) have a sound legal basis; (iii) produce benefits that justify costs, considering the distribution of effects across society; (iv) minimize costs and market distortions; (v) promote innovation through market incentives and goal-based approaches; (vi) be clear, simple, and practical for users; (vii) be consistent with other regulations and policies; and (viii) be compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels.

In May 1997, the OECD Ministerial Council endorsed the OECD Report on Regulatory Reform expanding the content of the 'good regulation' principle drawing on the 1995 OECD Recommendation. The Ministers also requested the OECD Secretariat to conduct country reviews based in part on self-assessment that provided an appropriate mechanism to assess countries effort in implementing the Recommendation.

29. Today, four fifths of OECD countries have explicit regulatory policies in place. Their experiences show that to be effective, a regulatory policy will encompass three basic and mutually reinforcing elements: a policy, an institution and a strategy to use regulatory tools.

30. First, the policy should be adopted at the highest political level. This lends authority to the institutions, provides incentives to strive to achieve the policy's goals, and supports transparency. The policy should contain explicit and measurable regulatory quality standards such as the 1995 *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation* (see Box 1).

31. Second, country experiences also indicate that for long-lasting success, an 'oversight body' can help drive the policy with management tools and instruments. Importantly it needs to have the capacity and authority to play a check and balance role and to assure compliance of regulations and regulatory environments with high-quality principles. International good practices seem to indicate that this type of body is best located at the *Centre of Government*.<sup>6</sup>

32. Third, the oversight body needs to develop a strategy and tools to enforce the policy. The most common tools used are (a) regulatory impact analysis, (b) consultations, (c) assessment of regulatory alternatives, (d) plain language drafting requirements, and (e) evaluation of the results of regulatory programs. In terms of strategy, the oversight institution needs to co-ordinate, monitor and report on high quality regulation. In practice, it should cover the two main dimensions of a high quality regulatory environment:

- Improving the quality and reducing the quantity of existing regulation and administrative formalities (that is, managing the 'stock' of regulations), and
- Reforming the process through which new regulations are created so that new regulation is only brought in when necessary and ensuring that the continuous stream of new regulation conforms to stringent quality criteria (that is, managing the 'flow' of regulations).

### ***Regulatory governance can provide a systematic and comprehensive framework for transition***

33. SEE countries are undergoing a fundamental transition from non-market structures, centrally planned economies and severe limits to democratic and individual freedoms. The legacies vary considerably between the former Soviet state **Moldova**, the successor states of the former Yugoslavia, the Soviet client state of **Bulgaria** and the isolationist/autarkic approaches of **Albania** and **Romania**.

34. They are also experiencing the historic opportunity of European integration, beginning with **Bulgaria** and **Romania**. As discussed below these prospects are perhaps the single most important driver of reforms. However, EU integration also presents great challenges at the same time. Indeed, the management of changes and reforms can precipitate, accelerate or slow convergence by many years.

35. The experience of the new Member States joining EU in 2004 is therefore an important precedent for SEE countries.<sup>7</sup> In the past 15 years, the ten new members have substantially reformed their regulatory regimes to assure the functioning of their democracies and market-based economies. For instance, Hungary estimated that 90% of its legal framework was enacted after 1989. As they carried out this huge regulatory reform and established a modern regulatory framework, new Members have also improved their regulatory governance and policies. They expanded public consultation as in Poland or embarked on a "guillotine" approach to modernize rapidly the stock of regulations like in Hungary which emulated the Swedish example (see Box 2).

36. Two reasons make this rich experience invaluable for SEE countries. First, many initiatives can be adapted and adopted directly. From Slovenia's fast track approach to transposition of EU directives to the setting up of a regulatory management unit under the Czech Republic Prime Minister, they form a pool of experiences and knowledge. Second, SEE countries can learn from past mistakes. For instance, it will be important to analyze and understand how to make better use of alternative instruments to regulation in

### Box 2. The Guillotine Mechanism to Reform the Regulatory Framework in Sweden

Countries in transition face an enormous task of reviewing and updating the legacy of laws, rules, and other instruments dating back decades. This must be done quickly to avoid slowing down economic growth and increasing regulatory risk. The goal of this reform is to establish a clear and accountable legal structure by creating a comprehensive and central regulatory registry with positive security. This can be done using the guillotine approach, pioneered by Sweden and used by Mexico and Hungary.

In the 1980s, Sweden enacted its “guillotine” rule nullifying hundreds of regulations that were not centrally registered. In 1984, the government found that it was unable to compile a list of regulations in force. The accumulation of laws and rules from a large and poorly-monitored network of regulators meant that the government could not itself determine what it required of private citizens. To establish a clear and accountable legal structure, it was decided to compile a comprehensive list of all agency rules in effect. The approach proposed by the Government and adopted by the Riksdag (Parliament of Sweden) was simple. The Government instructed all government agencies to establish registries of their ordinances by July 1, 1986. As these agencies prepared their lists (over the course of a year), they culled out unnecessary rules. Ministry officials also commented on rules that they thought were unnecessary or outdated, in effect reversing the burden of proof for maintaining old regulations. When the “guillotine rule” went into effect, “hundreds of regulations not registered... were automatically cancelled,” without further legal action. All new regulations and changes to existing ones were henceforth to be entered in the registry within one day of adoption. This approach was considered a great success. In the education field, for example, 90% of rules were eliminated. The government had for the first time a comprehensive picture of the Swedish regulatory structure that could be used to organise and target a reform programme. The registry may also have had the indirect effect of slowing the rate of growth of new regulations, and by 1996 the net number of regulations had indeed dropped substantially.

Source: OECD (2002) Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance

order to reduce the compliance costs of higher EU standards, or how to better transpose EU Directives to increase the rate of compliance and reduce the costs of enforcing regulation. Similarly, past experiences of the Czech Republic, Hungary and Poland illustrate the importance and benefits of adopting a structured approach to regulatory reform. The understanding of ‘dos and don’ts’ will save precious time, particularly as SEE countries have to make more substantial reforms in pursuit of convergence.

***However, reforming regulatory policies needs to take into account the political context of each country***

37. A word of caution is needed. During the 1990s, South East Europe experienced a more difficult transition than many Central and Eastern European countries. The region was afflicted by the adverse consequences of the dissolution of the former Soviet Union and the former Social Federal Republic of Yugoslavia; the disruption of pre-existing trade flows; and most importantly, by a series of devastating conflicts focused around ethnic or regional tensions which resulted in loss of life and economic assets, as well as a massive displacement of population.

38. Evaluating these circumstances requires care to avoid ‘a one size fits all’ approach. Reform programmes, in particular dealing with public governance, need to recognize that the size of a country matters as much as the endowments of culture and traditions. The legacy from the past can facilitate or hinder the adoption of specific regulatory policies adapted to each country. Ex-Yugoslavia for instance provided a large margin for policy experimentation. On the other hand the existence of mostly small countries with serious budgetary (and thus fiscal) constraints, as well as a small pool of human capital endowment to share with the private sector, will limit the creation of additional and skilful institutions. A risk exists that these countries, encouraged by international practice and single-issue advice will create many weak, small, under-resourced and fragile institutions with unmotivated civil servants.

## 1.2. Recent Progress in the Region

### *Strong drivers are helping SEE countries to reform their regulatory policies*

39. SEE countries have made progress across a broad front of regulatory governance. Three important drivers directed these improvements<sup>8</sup>:

- the process of European integration,
- strong support by the international community, and
- pressure coming from the private sector.

40. First, the goal of *integrating with the European Union* is pushing SEE countries to develop higher standards of regulatory governance. Though SEE countries are in different positions regarding their possible membership, all are improving transparency, accountability and efficiency in their rulemaking practices and capacities. For **Bulgaria** and **Romania**, who are targeting EU membership by January 2007, precise “roadmaps” have been defined with the European Commission. The ‘roadmaps’ specify the main steps to take to align their legislation and improve their administrative and judicial capacities including the enforcement of the Acquis Communautaire (See Box 3).

41. A different route is being followed for the Balkan region, namely the *Stabilisation and Association Process* (SAP) launched in May 1999 by the EU for five Balkan countries: **Albania**, the Former Yugoslav Republic of **Macedonia**,

#### **Box 3. The Challenge of EU Enlargement**

Candidates to EU membership must fulfil key political and economic criteria, and show their ability to take on the related obligations. Political criteria bear upon constitutional structures and human rights effective protection. Economic criteria relate to the existence of a working market economy and the capacity to withstand competition within the EU. The obligations relate to the readiness to adopt, implement and enforce the Acquis Communautaire under each of the twenty-nine chapters of the accession negotiations.

The Acquis Communautaire comprises the entire body of legislation of the European Communities that has accumulated, and been revised, over the last 40 years, comprising a total of more than more than 96 000 pages of legal text. It includes:

- The founding Treaty of Rome as revised by the Maastricht, Amsterdam and Nice Treaties.
- The Regulations and Directives passed by the Council of Ministers, most of which concern the single market.
- The judgments of the European Court of Justice.

The Acquis has expanded considerably in recent years, and now includes the Common Foreign and Security Policy (CFSP) and justice and home affairs (JHA), as well as the objectives and realization of political, economic and monetary union.

Countries wishing to join the European Union must adopt and implement the entire Acquis upon accession, though there is some flexibility as to timing. The European Council has ruled out any partial adoption of the Acquis, as it is felt that this would raise more problems than it would solve, and would result in a watering down of the Acquis itself.

Since the Copenhagen Summit in 1993, and in addition to transposing the body of EU legislation into their own national law, candidate countries must ensure that EU law is properly implemented and enforced. This may mean that administrative structures need to be set up or modernized, legal systems need to be reformed, and civil servants and members of the judiciary need to be trained. The European Commission is in charge of the annual assessment, also called ‘regular reports’ made public every autumn.

**Croatia, Bosnia and Herzegovina** and the **Federal Republic of Yugoslavia** (present **Serbia and Montenegro**). SAP aims to create and reinforce privileged political and economic relations with Balkan countries, and at the same time, to provide ad hoc financial assistance through the *Community Assistance for Reconstruction, Development and Stabilisation* (CARDS). SAP requires continued reciprocal commitments to arrange legislation and administration to make each Balkan country a credible candidate for membership in the EU.

42. To accelerate the integration and enforce the commitments, in particular those linked to the Copenhagen Consensus, most countries have set up appropriate institutions (see Table 1).

Table 1. **Institutions Dealing with European Affairs in SEE Countries**

	Institutions
Albania	Minister of State for Integration, Department of Approximation of Legislation <sup>9</sup>
BiH	Directorate for European Integration
Bulgaria	Minister for European Affairs <sup>10</sup> , European Integration Directorate at the Council of Ministers, European Integration Directorates in ministries and other governmental institutions, the Legislation and European Law Directorate within the Specialized Administration at the National Assembly,
Croatia	Ministry of European Integration
Republic of Macedonia	Sector for European integration and the Committee for European integrations with the Prime Minister as chair
Moldova	Department for European Integration in the Ministry of Foreign Affairs and the National Commission for European Integration (2003)
Romania	Ministry of European Integration (MEI) and the Executive Committee for European Integration
Republic of Montenegro (SCG)	The Ministry for International Economic Relations and European Integration together with the coordinating units for EU Affairs in the line ministries and government agencies; as well as the Council and the Committee for European integration and the Parliamentary Committee for European integration.
Republic of Serbia (SCG) <sup>11</sup>	Department for European Integration in the Ministry of International Economic Relations (May 2002)

Source: OECD (2004), *Review of Regulatory Governance in SEE Countries* and other material.

43. Second, strong support by the *international community* has helped SEE countries to improve and raise capacities to draft new laws taking into consideration international best practices, including improved consultation and in some case assessment of possible impacts. The region has continued to receive significant financial support (accelerated after the conflict in BiH and the Kosovo crisis) from the EU and individual European countries, the USA or Japan. Multilateral institutions, such as the World Bank, and its sister organization Foreign Investment Advisory Service (FIAS) have also played a significant role.

44. In this context the **Stability Pact** and its monitoring process provide important complementary and direct support for improved regulatory governance and policies. The Investment Compact, part of the Stability Pact, promotes and supports policy reforms to improve the investment climate in SEE countries and encourage investment and the development of a strong private sector. It has been behind monitoring major reforms from corporate governance to investment policies. The Investment Compact has also been

a promoter of important initiatives such as sound competition laws and policies and enterprise and small business policies that focus on new job creation.

45. The Stability Pact has also supported collective initiatives in the area of regulatory affairs. A landmark was the signature in 2002 of the Ministerial Declaration in Vienna, which showed the raising awareness of the importance of the quality of the regulatory environment for attracting foreign investments.<sup>12</sup> Since then, all countries have launched or reinforced policies, institutions and tools to improve the regulatory environment for businesses.

46. Third, pressure coming from the private sector is emerging and can constitute an important driver for further reforms. Important initiatives contributing to this process include advice and country missions by the Business Advisory Council to the Stability Pact, the work of the Regional Network of Foreign Investor Councils ([www.regionalfic.org](http://www.regionalfic.org)) and individual Foreign Investor Councils, “White Books” presented by such Councils (see Box 6), providing the governments with recommendations for future reforms, but also activities by bilateral chambers, local business associations and NGOs.

### ***Enhanced checks and balances processes are assuring better regulatory accountability***

47. A central dimension of good regulatory governance is the existence of systematic and mandatory ‘checks and balances’ to rule making powers. The key issue is that self-assessment by the officials in charge of preparing the rules (i.e. line ministries and agencies) is necessary but not sufficient. The appraisal of the quality of a draft regulation needs to be complemented by an objective opinion prepared by one or more institutions distinct from the entity preparing the draft (i.e. at arms’ length). Moreover, a second and broader opinion is important because sectoral drafters may have great difficulties in being aware of the cumulative impacts of a measure vis-à-vis the whole legal, budgetary and economic framework.

48. All SEE countries observe this ‘golden rule’ of regulatory governance where at least one institution different from the promoting body can ‘challenge’ the quality of a draft. In practical terms, often the office in charge of coordinating the agenda of the *Centre of Government* usually enforces this ‘golden rule’ verifying that all opinions have been incorporated in the dossier submitted for approval.<sup>13</sup>

49. Encouragingly, as Table 2 indicates, many SEE countries are moving beyond a single appraising institution. Governments are increasingly requiring that the Ministry of Finance and/or the body responsible of EU integration exert additional mandatory and systematic verifications on draft measures. In some cases, the involvement of other ministries with responsibilities within the scope of the proposal is mandatory but left to the discretion of the proponent ministry or to the office of the *Centre of Government* in charge of monitoring the legislative process. In other cases, clear criteria define the distribution of draft laws. In **Croatia** the Competition Agency and the Ministry of Environment are nearly always involved.<sup>14</sup> In some countries like **BiH** and **Macedonia**, the draft laws are submitted to a Collegium of deputy ministries or State Secretaries a few days before the final discussion at the *Centre of Government*.

50. These are encouraging trends, though room for improvement exists for the countries to move toward a more ambitious approach. At least four issues require attention. First, in all SEE countries the mandatory checks apply mostly to laws and not to subordinate regulations. When checks on subordinated regulations exist, they tend to be more lax.

51. Second, by tradition, verification processes continue to concentrate on the legal quality of the measure and its harmonization with the legal framework in particular with the constitution and international treaties. For instance, **Croatia’s** Cabinet Office for Legislation is not authorized to comment on the content of the proposal, only its form. The budgetary and European impact tests are often too recent and weak to play a countervailing role vis-à-vis strong promoting ministries.

52. Third, verifications arrive too late in the decision-making process when preparing a regulation. Changing the proposal at a meeting of the *Centre of Government* tends to be extremely difficult from a political



Table 2. **Checks and Balances in the Rule-Making Process**

Systematic and Mandatory Arm's length controls of the quality of draft measures				
	Legal controls	Budgetary controls	Other controls	Impact on business controls*
Albania	Ministry of Justice	Ministry of Finance		
BiH	Legislative Secretariat			
Bulgaria	Legislative Council in the Ministry of Justice Legal Department in the Council of Ministers	Ministry of Finance	Minister of European Affairs	
Croatia	Cabinet Office for Legislation	Ministry of Finance	Ministry of European Integration	
Rep. of Macedonia	Secretariat for Legislation <sup>15</sup>	Ministry of Finance (2003)	Department for EU Integration	
Moldova	Ministry of Justice	Ministry of Finance		Ministry of Economy
Romania	Legislative Council reporting to the government	Ministry of Public Finances and Court of Auditors		
Rep. of Montenegro (SCG)	The Governmental Commission in charge for legislation, upon proposal by the Ministry of Justice Secretariat for Legislation	Office of internal auditing in the Ministry of Finance <sup>16</sup>		
Rep. of Serbia (SCG)	Office of Legal Services Support of the Prime Minister's Office Republic Secretariat for Legislation			Council for Economic Regulation Reform (2003)

Note: \* See also Table 4 on the powers of regulatory oversight bodies

Source: OECD (2004) Review of Regulatory Governance in SEE Countries and other documents

point of view. Drafters and ministries have already made up their minds. As they have already invested considerable political capital and other resources into the preparation of the draft, they tend to minimize changes and oppose fundamental changes (including the 'no regulatory action' alternative). Often for the sake of consensus building, divergent views will be incorporated at the risk of reducing the overall coherence as well as the general positive impacts of the regulation originally foreseen.

53. Fourth, except for few cases, SEE countries do not mandate a specific independent appraisal of the potential impacts on businesses and citizens of future regulations. *Ex ante* independent opinions on draft measures are provided in **Serbia** by the Council for Economic Regulation Reform (2003). In **Macedonia**, the Commission for Political System, the Commission for Economic System, and the Commission for Human Resources and Sustainable Development are as a rule requested to review and present an opinion on a

draft measure. In some countries, new private-public bodies are engaging in ex ante review to complement this important function. In **Albania**, independent opinions on impact on business are provided by the Business Advisory Council chaired by the Minister of Economy and in **Montenegro**, the High-level Co-ordinating Body chaired by the Prime Minister was established with participation of the international community to give opinions on impact on business. A situation that can be improved by extending the review powers to the recently established institutions in charge of improving the business environment, which can in theory challenge a specific proposal in terms of the potential compliance costs (see Table 4)<sup>17</sup>.

### **National regulatory policies are emerging**

54. International good practice recommends that governments adopt broad policies with clear objectives and frameworks for implementation (See Box 1 above). Overall, only modest progress can be reported. Different countries have advanced at different speed and achieved different results, and an overarching regulatory policy agenda is still to be adopted at the highest level of the government. Early movers include **Romania**, **Serbia** and **Moldova**.

55. **Romania's** government launched in the past few years several programmes for improving sectoral regulatory framework. Though lacking coordination among them, they have encouraged the improvement of regulatory quality. The government has recently proposed amending Law No.24/2000 on the technical standards for adopting legislation, specifying the measures to be taken before voting on a law such as mandatory consultation, scientific expertise and plain language drafting. In February 2004, the **Moldova** government announced a three-year programme to reform the regulatory framework for SMEs (including introduction of one-stop shops).<sup>18</sup> It specifically set up new rules for the creation of laws and regulations, providing a legal requirement for their publication prior adoption and consultation with concerned stakeholders. Though not defined as a policy, the **Serbia** government launched an action plan in 2003 requesting that each ministry prepare a regulatory impact analysis for draft regulations appraised by the *Council for Regulatory Reform of the Economic System*.

### **Governments have in parallel continued to invest in administrative simplification programs**

56. Most SEE countries have been running ever more ambitious administrative simplification policies and programs. Despite the fact that these initiatives have a narrower scope than regulatory improvement policies as defined above, administrative simplification initiatives have helped countries to improve costly practices and reform burdensome administrative procedures such as licensing and authorizations (see Table

**Table 3. Administrative Simplification Reforms in SEE Countries**

	Start ups & registration reengineering	Reduction of information requirements	Reform of permits and authorisation formalities	Improving access to regulatory information	One-stop shops for licenses and permits
Albania	Yes	Yes	Yes	Yes	No
BiH	No <sup>21</sup>	Yes	No	No	No
Bulgaria	Yes	No	Yes	Yes	No <sup>22</sup>
Croatia	No	Yes	Yes	Yes	No
Rep. of Macedonia	Yes <sup>23</sup>	Yes	Yes <sup>24</sup>	No	No
Moldova	Yes	Yes	Yes	Yes	Yes
Romania	Yes	Yes	Yes	Yes	Yes
Rep. of Montenegro (SCG)	Yes	Yes	No	No	Yes
Rep. of Serbia (SCG)	Yes	NA	NA	Yes	NA

Note: \* In official formalities

\*\* In website, legibility of formalities, improvement beyond promulgation of law implementation (users guidelines, etc)

Source: OECD (2004) Review of Regulatory Governance in SEE Countries



3). **Bulgaria**, for instance, passed an array of laws to improve the business climate and launched a comprehensive Action Plan involving the setting up of one-stop shops and E-government mechanisms amongst other initiatives.<sup>19</sup> **Romania** adopted in May 2003, a wide-reaching program called the *National Actions Plan for the Development of the Romanian Business Environment* with key components such as:<sup>20</sup>

- Improving the dialogue between the business representatives and the decision makers aiming at a higher involvement of the private sector in the process of drafting laws that have an impact on the business environment
- Simplifying and improving the administrative procedures;
- Consolidating the institutional structures involved in the reforms related to business environment improvement.

57. The Foreign Investment Advisory Service (FIAS) in particular has been at the forefront of helping SEE countries to move forward on administrative simplification initiatives (See Box 4). With its help, **Serbia** has drafted an Action Plan for the Removal of Administrative Barriers to FDI, to be adopted by the government.

#### Box 4. FIAS in South East Europe

The Foreign Investment Advisory Service (FIAS) is a joint service of the International Finance Corporation and the World Bank. FIAS has carried out studies of administrative barriers to investment in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Romania and Serbia. A standard “Administrative Barriers Project” is applied to examine all the steps an investor has to go through in order to start up a new business:

- Start-up Procedures (e.g. registration and licensing)
- Locating Procedures (e.g. access to premises, construction permits and utilities)
- Operating Procedures and reporting requirements (e.g. taxes and inspections)

The reports include a detailed description of each of the procedures; an analysis including the problems experienced by investors, inter-regional and international comparisons, and the strengths and weaknesses of the current procedures. The reports also contain many detailed recommendations for improvement. FIAS is now moving towards “self-assessment” where a counterpart team in the government will utilise FIAS-developed templates to collect the basic “institutional” information on existing administrative procedures for business establishment and operation. The results from self-assessment are analysed in conjunction with the results of a business survey of administrative costs. This is based on a representative sample of the business community describing their actual experience (e.g. time and costs requirements) for each of the administrative procedures. The business survey is used to identify specific areas that require more in depth review and analysis along the lines of a more traditional study of administrative barriers. The use of the self-assessment approach will also provide a mechanism for effective capacity building by involving government counterparts in the initial analysis and providing training for continued monitoring of the investment environment. The role of the team would then be translated into a continuing policy and procedural review and change of advocacy role.

Source: Adapted from OECD (2003), *Review of Regulatory Governance in South East Europe*, Stability Pact for South East Europe and Compact for Reform, Investment, Integrity and Growth, Paris.

#### ***A growing understanding that strong institutions to manage the regulatory process are needed***

58. A law, a policy, a programme are certainly necessary. However, to keep reform on track and on schedule, and to ensure objectives, targets are reached and standards continue to improve, they need official bodies to monitor progress and be accountable to society. Without these oversight institutions, ministries and agencies will find difficulties to reform themselves, given the countervailing pressures. Table 4 illustrates some of the different approaches followed by SEE countries.

Table 4. Deregulation and Regulatory Improvement Bodies

	Body in charge of regulatory quality issues	Type*	Date	Location**	Size	Supported by donors	Ex ante Systematic Appraisal	Consultation	Advocacy	Challenge	Monitoring
Albania	Task Force for Administrative Barriers Reduction (FIAS supported)	AS RegM	2003	MoE	variable	Yes	Yes	Yes	No	Yes	Yes <sup>25</sup>
BiH	Task Force for Administrative Barriers Reduction (FIAS supported)	AS	2002	MoE	5	Yes	No	No	Yes	Yes	No
Bulgaria	Council for the Modernisation of the State Administration	AS	2003	CoG	Variable	Yes	No	Yes	Yes	Yes	Yes
Croatia	Task Force for Administrative Barriers Reduction (FIAS supported)	AS	-	MoE	2	Yes	No	No	Yes	No	Yes
Rep. of Macedonia	Task Force for Administrative Barriers Reduction (FIAS supported)	AS	2002	MoE	2	-	No	-	Yes	-	Yes
Moldova	Inter-ministerial Commission for Coordination of activities within the Regulatory Reform	AS	2004	CoG	20	-	-	-	Yes	Yes	Yes
Romania	Directorate for Monitoring and Improving the Business Environment	AS	2001	CoG	45	Yes	No	Yes	Yes	Yes	Yes
Montenegro	Governmental Commission for Economic Freedoms ****	AS RegM	2003	CoG	20	Yes	Yes	Yes	Yes	Yes	Yes
Serbia	Council for Regulatory Reform of the Economic System	RegM	2003	CoG	18	Yes	Yes	Yes	Yes	Yes	Yes

Note: \* AS: Administrative Simplification, RegM Regulatory Management

\*\*CoG or Centre of Government, usually reporting to the Council of Ministers. MoE: Ministry of Economy

\*\*\* "Routinely consulted" means that other member of the administration seek advice from the oversight body. "Advocacy powers", implies that oversight body can propose reforms to existing regulations, and "Challenging powers" refer to the possibility of the oversight body to censor a regulatory proposals put forward by a ministry or agency.

\*\*\*\* Commission also includes independent domestic and international experts.

Source: OECD (2004) Review of Regulatory Governance in SEE Countries

59. Most institutions are of quite recent creation. In theory, most of the existing bodies have significant powers such as advocacy for reforming existing regulations, or challenging new regulation proposed by other ministries and reporting progress in the policies. However, with the exception of **Serbia's** Council on Regulatory Reform, the institutions in charge of implementation are not systematically involved in rule-making and lack the political leverage to stop low quality regulations being enacted.

60. The establishment of an inter-ministerial task force in charge of implementing a programme of reduction of administrative barriers drafted with support of FIAS (Task Force for Administrative Barriers Reduction) to monitor recommendations on administrative barriers is the most common institutional setting encountered in the region. **Albania, BiH, Croatia and Macedonia** have one. These temporary bodies are built under a similar architecture including a Steering Board and working groups that run specific deregulation projects for administrative procedures. The Steering Boards are chaired by the Ministries of Economy and include representatives of the private sector.

61. Interestingly, SEE countries are developing overseeing bodies specifically in charge of managing the regulatory process at the *Centre of the Government*, and thus converging toward international best practice. Two initiatives stand out: **Serbia's** Council for Regulatory Reform (see Box 5) and **Moldova's** Inter-ministerial Commission for Coordination of activities within the Regulatory Reform.

#### Box 5. Serbia's Council for Regulatory Reform

In April 2003, and with financial backing from the World Bank, the government created the Council for Regulatory Reform of the Economic System, whose mandate is to:

- Improve the business environment of private firms and foster entrepreneurship;
- Advocate initiatives and reforms for existing and proposed laws, regulations and other general measures
- Provide opinions on draft laws, regulations and general measures, which the government then considers and eventually approves.

The Council is formed of high officials and private sector representatives. The Minister of Economy chairs it. Private sector representative are also members and a small secretariat of economists and lawyers assists the Council's meetings. The Council reports periodically to the Government

During its first year, the Council's main activities were to reform the registration of the business system, to prepare RIAs on targeted proposals, and set up a registry of regulation with legal security.

Source: OECD (2004), Review of Regulatory Governance in SEE Countries

62. In the near future, **Bulgaria** may follow the same path. Since 2000, the Ministry of Economy has been running a Task Force with representation of independent experts and members of business associations to monitor and reduce the number of regulations and formalities. The Task Force's achievements however have been limited. The proposed *Law on Reduction of Administrative Regulation and Administrative Control of Economic Activity* may reinvigorate and reform this body, providing it with enlarged powers.

63. As for the FIAS Task Forces, most of the oversight bodies have made efforts to offer a forum for dialogue between the government and the private sector, and sometimes to non-governmental organizations. They have hence become important instruments for improving regulatory transparency.

64. An important issue for the future will be how these emergent oversight bodies will evolve and interact in a complex institutional landscape, in particular vis-à-vis the newly established economic regulators in charge of network industries. Regional political instability makes the institutions fragile. As has been signalled by the EBRD:

*“While political change is a fact of life in the emerging democratic structures of the region the lack of continuity in institutional structures, laws and policies is slowing reform. The frequency with which, for example, investment promotion agencies and SME development agencies are dissolved or radically restructured has meant that building a professional culture of service to meet the policy and operational challenges and change needed is doubly difficult.”<sup>26</sup>*

### **The use of regulatory instruments is expanding**

65. In parallel to sound policies and institutions, governments need to develop adequate and efficient instruments to improve the regulatory framework. A large variety of tools is now available and can be adapted to the local environments and capacities. In the past few years, SEE countries have expanded the panoply of regulatory instruments (see Table 5).

**Table 5. Progress in the Use Of Regulatory Instruments in SEE Countries**

	Regulatory Transparency				Licenses and permits improvements		RIA	Inspection Reform
	Forward planning of laws	Notice and comments	Active Consultation	Better Access	Silence is consent	Licenses elimination		
Albania	NA	NA	1	3	1	1	1	NA
BiH	2	1	2	2	1	2	1	3
Bulgaria	3	1	3	3	3	2	3	2
Croatia	2	1	2	3	NA	2	2	3
Rep. of Macedonia	2	2	1	2	1	1	1	2
Moldova	2	1	2	2	2	2	2	1
Romania	2	2	4	2	3	3	2	2
Montenegro	2	2	2	2	2	2	1	2
Serbia	2	1	3	3	NA	1	3	1

*Note:* These indicators reflect a qualitative classification based on responses to the OECD (2004) Review and reflect the combination of policy measures taken, institutional development, and performance. A rating of 5 indicates performance comparable to leading OECD countries in these fields. The scale and the rating were established by Cesar Cordova Novion based on the responses to the OECD (2004) Review, complemented by additional information on the countries of the region.

### **Regulatory transparency has been established, but requires consolidation**

66. Improving **regulatory transparency** is a key element of a sound regulatory policy. Transparency often complements efficiency and accountability principles in intricate administrative and political situations. Transparency can address many causes of regulatory failure, such as regulatory capture and bias toward concentrated benefits, inadequate information in the public sector, rigidity, market uncertainty and inability to understand policy risk, and lack of accountability. Transparency can encourage the development of better policy options and reduce arbitrariness and corruption.

67. Early and meaningful consultation before a regulatory decision is taken is one of the most important assurances to businesses of a supportive legal environment. Consultation processes between public officials and civil society must be a routine part of decision-making, rather than *ad hoc*, and must be carefully structured to avoid bias and uneven access by more powerful interests such as very large businesses. Consultation should be open to all affected groups in society and should be used to collect information on whether government action is needed, and how a law or rule can be designed to achieve its goal at lowest cost to business.

68. As for other issues, the region has made important progress. However, most countries lack provisions that compel authorities to pass a law through public debate and despite some initiatives, they lack general

requirements on public consultation. As for other policy elements, consultation of secondary regulations is worse. Most countries have fostered regulatory transparency through four types of instruments as described in Table 6.

Table 6. **Basic Instruments to Increase Regulatory Transparency**

<b>Forward planning</b>	Forward regulatory planning is a means of raising awareness of proposed new regulation that has the potential to allow for more active public consultation by providing greater notice to stakeholders and thus allowing them more time to organize and formulate their views and submissions. Usually forward planning includes the publication of the overall legislative agenda proposed by a government.
<b>Notice and comments</b>	<p>A publication for comment procedure creates an opportunity and even a legal right for all citizens to participate in rulemaking activities. The procedure needs at least to include the following steps:</p> <ol style="list-style-type: none"> <li>1. The government publishes the proposed regulation in the official gazette or on an official website. The notice must set forth the text and the substance of the proposed rule, the legal authority for the rulemaking proceeding, and applicable times and places for public participation. Published proposals may also include information on contacts within regulatory agencies.</li> <li>2. During a statutory time (between 4 and 12 weeks)<sup>27</sup> all interested persons – nationals and non-nationals alike – have an opportunity to comment through written data, views, or arguments on a proposed rule. It is often the case that the business community challenges the factual assumptions on which the regulator is proceeding, and this is very useful in improving the regulation.</li> <li>3. After the statutory consultation period is over, the government publishes the final regulation. This final regulation includes a statement of the basis and purpose of the rule and responds to all substantive comments received.</li> </ol>
<b>Consultations with stakeholders</b>	A crucial albeit low-cost way to consult with interested groups is to send regulatory proposals directly to selected affected parties and invite comments. This procedure is generally systematic, structured, and routine, and may have some basis in law, policy statements or instructions. Affected groups on an official circulation list receive drafts of important regulations. This flexible procedure can be used at all stages of the regulatory process. Responses are usually in written form, but regulators may also accept oral statements, and may supplement those by inviting interested groups to hearings.
<b>Improved access to legal and regulatory requirement</b>	Countries supplement the official gazette with tools and mechanisms to help addressees of regulation to know what are their legal obligations. An official gazette indeed is not enough as it only registers the changes (flow) and not the actual stock of amendment, elimination and complementarities of regulations. Different tools exist besides the basic codification and restatement of laws and subordinated regulations. They include drafting easy to use manuals, up to date and registries of formalities and registration enforceable (and thus susceptible to be inspected). An added value to the registry is when it has “positive security”, which means that regulations must be included in the registry to have legal effect.

Source: Cesar Cordova and Scott Jacobs, *Seven quick strategies to improve the business environment in Bosnia and Herzegovina*, Prepared under contract to World Bank SEED by Jacobs and Associates, April 2004

69. SEE countries are developing the foundations for **forward planning** mechanisms. Most governments request that ministers present to the *Centre of Government* a detailed draft program of the draft acts that they plan to propose during the coming year. For instance, the government of **Montenegro** established that a *Regulatory Plan* be prepared at the end of each year. The plan needs to be subdivided into four quarterly sections to be easily monitored. The plan specifies the working party and responsible ministers in charge of preparing the draft law. In **Romania**, a system of forward planning has been developed to plan the EU transposition process. **Bulgaria's Constituent Regulations for the Council of Ministers**, specifies a formal system for forward planning and coordination among ministries.<sup>28</sup> However, these plans and programs more often concern laws rather than laws and subordinated regulations and are not always published.

70. A second ‘passive’ consultation mechanism which encourages the embedding of transparency and accountability across the administration is often referred to as ‘**notice and comments**’ obligations. These procedures give legal right for citizens to participate in rulemaking activities. It provides an opportunity

for participation to all potentially affected parties. Many countries considered it as a protection and insurance against regulatory capture. So far, SEE countries have not established this procedure, though in some of them, ministries have been posting their proposal on their website before being finalized.

71. Two issues are involved when developing '*active*' *consultation mechanisms*: first the quality of the forum, and second, the quality of the consultation process. Undeniably, SEE governments have pushed for improved dialogue and have encouraged new private-public forums. In addition to joint institutions like the FIAS Task Forces referred to above, new privately backed groups have actively engaged with the government. The Business Advisory Council to the Stability Pact, the Business and Industry Advisory Committee to the OECD, for example have provided policy advice, the Regional Network of *Foreign Investors Councils* and individual councils have been set up in **Albania, BiH, Bulgaria, Macedonia, Moldova, Romania, Serbia** and **Montenegro** (in some countries such as Bulgaria and Romania they have existed for many years). They have been active in producing valuable "White Books" for the government (see Box 6). This yearly document intends to promote a policy dialogue between policy-makers and the foreign investment community to improve the investment climate, thus stimulating enterprise development. The national *Competitiveness Council*, set up with the support of USAID, has also opened new channels for public and private sector dialogue in countries like **Croatia, Macedonia** and **Serbia**.

**Box 6. Private Sector Contributions to Regulatory Reform:  
The Example of the White Book from the Foreign Investors Council in Serbia**

The White Book 2004 of the Foreign Investors Council in Serbia summarizes the main obstacles to investment and business development in the country and formulates concrete proposals to overcome these impediments. It identifies the following high priorities for the government action:

**HIGHEST Legislative priorities**

Laws for adoption	Anti-Monopoly Law, Law on avoiding conflict of interest in the performance of public positions, Law on Foreign Trade, Law on Investment Funds, Law on Mortgage, Law on Denationalisation, Law on Registration of Business Entities, Law on Restitution of Land and Property, Law on Urban Planning and Construction, Law on VAT
Laws for revision	<p>Bankruptcy Law - to provide for greater creditors' rights and satisfaction of their claims, more efficient and impartial modes of sale of assets and for quicker proceedings, as well as to avoid keeping the company operational at any price and to the cost of existing creditors.</p> <p>Company Law and the Securities Act - to remove discrepancies in the respective texts and to remove provisions creating conflict between the two laws. Company law to address the issue of socially owned companies which will remain on completion of the privatization program.</p> <p>Corporate Income Tax Law - to adapt to the introduction of IFRS.</p> <p>Law on Securities and Financial Markets - to allow the issue of shares in foreign currency, to remove excessive financial burdens on secondary market transactions in short-term securities, and to amend the procedures for intervention in the foreign exchange market by the National Bank of Serbia (NBS).</p>

**Areas for Improvements**

Banking	<p>Open Foreign Currency Position: to allow banks with share capital paid in foreign currency to report such capital as a foreign currency denominated liability for calculation of the maximum open FX position report.</p> <p>Legal Lending Limit: to allow the full deduction of receivables guaranteed by a parent bank in the calculation of the bank's legal lending limit.</p>
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**Box 6. Private Sector Contributions to Regulatory Reform:  
The Example of the White Book from the Foreign Investors Council in Serbia (cont.)**

Land and real estate	Monopolistic control of urban land: to abolish government agency monopolistic control over the supply of urban land to allow the market to determine prices. Construction: to remove time restrictions on construction work. Mortgage: to implement a temporary mortgage register.
Taxation	Tax administration and legislation: to introduce a system of binding interpretation of fiscal provisions to address the imprecise wording of laws, the discretionary powers of authorities, and the reluctance of the tax administration to issue general rulings all of which contribute to untenable uncertainty.

**HIGHEST Institutional priorities**

Administration	To establish a One Stop Shop for business registrations and administration. To clarify the mandates, responsibilities and powers of ministries and governmental agencies. To improve and streamline work methodologies and procedures within public administrations. To establish an effective independent body responsible for audit of public finance.
Banking	To train NBS's compliance auditors in accordance with the shift in orientation of the supervision function.
Insurance	To set up an effective insurance supervisory body to monitor and enforce legislation.
Judiciary	To train the judiciary and their staff in commercial issues. To establish clearer court reporting. To introduce a transparent mechanism for judge appointments. To establish an effective independent anti-corruption agency entitled to sanction infringements of laws.

**HIGHEST Policy priorities**

- Adoption of a clear, precise and realistic agenda of legislative and regulatory reforms.
- Adoption of FDI and competitiveness strategies at regional and international levels.

Source: Foreign Investors Council (2004): Proposal for Improvement of the Investment Climate in Serbia [www.fic.org.yu](http://www.fic.org.yu)

72. These round-tables often complement the tripartite bodies where typical social partners discuss policies and major legislation, such as **Albania's** Business Advisory Council **Romania's** Social Dialogue Commissions, or the chambers of commerce, in countries like **Bulgaria** and **Macedonia**.

73. As well, individual ministries have set up working groups and task forces to prepare new legislation and programmes, where business and citizens associations are invited to contribute. Some official bodies have also become more active such as the *Council for Economic Growth of the Bulgarian Council of Ministers* or the *Joint Consultative Council* of the Ministry of Economy, which is the main consultation body for discussing with businesses the government's positions during the negotiation of the EU Accession Chapters.

74. Despite these efforts, the region may still need further their efforts to establish and enhance regulatory transparency. In the 4<sup>th</sup> Edition of the Investment Compact Monitoring Instruments (April 2004) it is stated that:

*“[The] communication and dialogue with private sector (both international and domestic companies) needs to be strengthened. While significant steps and initiatives have been taken here especially by private sector groups many companies (in particular small business) still point to little or no meaningful dialogue with policy makers, opaque regulatory systems and protracted slow moving reforms to address identified obstacles to business, and hidden costs through procedures demanded and corruption”.*

75. An obstacle is the low degree of awareness amongst officials about the importance of consultation. In some countries, sharing a proposal with the public is still considered illegal. It is still too common to hear that because politicians and officials had been elected they have received a mandate to legislate and regulate with full competence. Not without reason, there is a generalized suspicion that powerful interest groups will take advantage of the newly opened channels to lobby the authorities and try to capture consultation.

76. Serious issues exist in terms of private sector representation. Across the region, organisations representing private sector are still relatively weak. In particular, internal consultation mechanisms may need further improvement (at national, sectoral and local level). A few exceptions exist, such as the SME Council in **Romania** or the Employers' Association in **Croatia**. Consulted “representatives” of the private sector are often bureaucracies that may not appropriately convey the views of a new generation of stakeholders. Critics have argued that they stand for ‘insiders’ that represent powerful business interests, big firms, state-owned enterprises, and large money owners rather than SMEs or new entrants. Current bodies such as chambers of commerce, especially those based on compulsory membership, are viewed by the private sector as not truly independent organisations with little incentive to advocate reforms.

77. In addition to a forum, the second dimension of a proper active consultation process is to have adequate procedures and minimum quality criteria to be set and enforced. This is a major challenge for SEE countries. Most have not yet developed structured consultation processes based on clear standards setting the requirements with respect to the information provided to the consulted parties, the minimum time of the consultation, the response by authorities to the suggestions and the rights and obligations of all parties. **Romania's** ‘Sunshine Law’ is perhaps one of the most forward-looking initiatives in this field (see Box 7).

#### Box 7. Romania's ‘Sunshine Law’

In 2002, the Government decided to make consultation with employer's organisations and NGOs mandatory for all proposed regulations that may have an impact on the business environment. In particular, the Decision established a minimum period (ten days as a rule) for the authorities to withhold with further actions to give the consulted parties an opportunity to comment and provide suggestions. A year later, the Government with the ‘Sunshine Law’,<sup>29</sup> extended the consultation requirements to all aspects of government decision-making. The law establishes the framework in which both institutional dialogue and regular meetings between government officials and private sector take place.

Source: OECD (2004) Review of Regulatory Governance in SEE Countries

#### ***Licensing systems have been improved, though they need further attention***

78. An important approach to reduce administrative and regulatory burdens is to **reform the licensing system**. Different initiatives have been launched, with more or less success by SEE countries. As for other schemes, FIAS has been a valuable engine for reform thanks to its inventory of procedures and major problems encountered by businesses and foreign investors.

79. In May 2003, **Romania** launched a wide-reaching program: the *National Actions Plan for the Development of the Romanian Business Environment* building on two early initiatives, the ‘Sunshine Law’ and the ‘Silence is consent Law’.<sup>30</sup> The latter oversees the procedures for obtaining a license, renewing a license and reclaiming a license in case the term of suspension of a license has expired or the obligations of the claimant has been



met. It applies to all licenses issued by the public administration with the exception of those relating to nuclear activities, firearms, banned substances and other aspects of national security.<sup>31</sup> The Action Plan contains several measures that have precise deadlines for specific line ministries. In addition to reviewing licenses and permits, the *Programme* also has measures for consolidating dialogue with the business sector. A step forward in this direction is represented by the acceptance (in certain cases) of self-declaration certificates in order to avoid presenting original or legalized copies of documents. A Directorate for Monitoring and Improving the Business Environment of the Ministry of Economy and Trade follow up progress and report to the *Centre of Government*.

80. **Albania** is embarking on a new initiative on “*simplification and standardisation of the criteria and procedures of the public services offered by the central administration institutions*”<sup>32</sup> (including licenses, authorisations, permits and certificates). The first phase of implementation of this initiative will involve analysis and identification of potential areas for reduction of requirements and development of appropriate regulatory measures. In **Bulgaria**, the government has undertaken to alleviate or eliminate some 192 regimes (for licensing, permits or registration), of which 144 are in the process of alleviation and elimination. An interesting example of reforms carried out in this area comes from **Moldova** with a number of initiatives: the Chamber of Licensing and a Compensation Rule (see Box 8). Also the regulatory reform initiative foresees optimisation and simplification of the procedures for licensing and authorisations, as well as decreasing the number of requested documents.

#### Box 8. Reforming Business Licenses in Moldova

In December 2001, the Law on Licensing limited the number of activities that needed to be licensed to a total of 58 and restricted the powers of ministries and departments to create new licenses. Only a law or legislative amendment can now create a new license. All departments with previous authority in the field of licenses now need to forward all data regarding licenses given to economic agents, licensing regulations, and so on to the Chamber of Licensing.

To implement the Law, the Government established the Chamber of Licensing in charge of granting 44 types of licenses out of a total number of 58 types of activities. The remaining 13 licenses are granted by the National Bank of Moldova, the National Securities Commission, the National Agency for Energy Regulation, the National Agency for Regulation in Telecommunication and Informatics, the Co-ordination Council on Audio-Video, as well as local public administrations.

The Law also established a ‘silence is consent’ rule of 15 working days, and adopted the rule that all licenses are valid for 5 years, except for certain activities, such as import and trade of petroleum products; production, transportation, distribution of energy (25 years); gambling and lotteries; import, trade, production, warehousing of spirits; import, processing and trade of tobacco products; retail trade of alcoholic drinks; audio-video translation (one year).

A second noteworthy initiative is the Law on Foreign Investment (adopted in 1992, but revised several times since). In particular the Law includes a general principle (article 43), which states that when new legislative measures are adopted that worsen the business conditions for a foreign investor, the investor can select the old or the new legislation to comply with. This Law is applicable for ten years after the new legislation came into application. However, this powerful rule is not applicable in a number of fields, including the fiscal one.

Third, individuals may purchase a temporary license to carry out business activities such as retailing, workshops, crafts, etc. The patent works both as a temporary business license as well as a form of tax pre-payment, exempting individuals from having to keep records of their activities. The patent license has been well received, however, once the business starts growing the usual difficulties of obtaining licenses, dealing with the tax office, coping with state inspections, etc. re-appear.

Source: OECD (2004), Review of Regulatory Governance in SEE Countries

81. A second area for improving licenses, permits and other administrative procedures has consisted in trying **to reduce and enforce the response time** of authorities to individual submissions (See Table 7). In **Romania**, the basic approach has been to set up a general limit: “if no specific time limit is stated in the relevant law, then 30 days is considered the limit for settling the request to obtain a license.” If there are documents missing in the application, the authorities have the obligation to notify the claimant of this within 10 days of the limit for producing the administrative act specified in the law. The official responsible for the delay can be sanctioned according to either the *Statute of Public Servants* or the *Labour Code*. **Bulgaria's Law on the Administrative Servicing of Natural and Legal Persons** states as well, that in cases where no other limits are specified, the general rule is that the administration should respond within 1 to 3 months. Unfortunately, no country of the region has so far required that all procedures identify the officer in charge of the authorisation.

Table 7. Improving Licensing Procedures

	Time limits for authorisations	‘Silence is consent’ rule	Mandatory indication of name of officer in charge of authorisation
Albania	Yes	No	Yes <sup>33</sup>
BiH	Yes	No	No
Bulgaria	Yes	Yes	No
Croatia	Yes	No	No
Rep. of Macedonia	Yes	Yes	No
Moldova	Yes	Yes	No
Romania	Yes	Yes	No
Rep. of Montenegro (SCG)	No	Yes	No
Rep. of Serbia (SCG)	No	No	No

Source: OECD (2004) Review of Regulatory Governance in SEE Countries

82. Two further issues limit the effectiveness of these initiatives. First, specific laws often extend the mandatory response limit usually set in Administrative Procedure Laws. Generic limits are progressively eroded as new laws supersede old ones. Different pieces of legislation focusing on different sectors and domains set new and different limits, reducing the power and clarity of a single rule.

83. Second and more problematic, time limits are often not respected by authorities, reducing in practice the legal mandate. Businesses are thus obliged to wait indefinitely, unless they want to pay to speed up the process. The cost of appealing for a simple formality and the risk of retaliation by the licensing authority compounds the problem. High costs of complaining and substantial risks of retaliation means that businesses accept the situation and either absorb the cost passing it to consumers or speed up procedures through corruption.

84. A mechanism used by some OECD countries like Italy, Spain or Mexico to remedy to this sort of problem is the setting up of **‘silence is consent’** rules. Use of this rule should be carefully adapted to the individual circumstances and needs of a country. Some SEE countries have adopted similar mechanisms. In **Bulgaria**, the *Law on Reduction of Administrative Regulation and Administrative Control of Economic Activity* established such a rule with significant detail.<sup>34</sup> **Romania** has also set up a ‘silence is consent’ mechanism for major procedures in its *Sunshine Law* (see Box 7) as well as Moldova in its Law on Licensing (see Box 8). In **BiH**, several municipalities have applied the rule on a pilot basis for selected processes, such as the sole proprietorship registration and issuance of several licenses. Other countries have set up the rule in a more focused way. For instance, the ‘silence is consent’ rule was introduced in the forthcoming *Handicrafts Law* in **Macedonia**.<sup>35</sup>

85. Finally, SEE countries have striven to reduce the transaction costs of accessing the regulatory requirements as well as controlling the response time for authorisations and permits through the establishment of **one-stop shops**. The risk exists that the reality of a one-stop shop might fall short of the theory. However,

in some specific cases, one-stop shops have gone beyond adding an extra layer to the bureaucracy to become a key element in a reengineering of administrative procedures. This has been the case when countries have focused on improving the registration of new firms. For instance, **Serbia** Council for Regulatory Reform has led a major overhaul of the business registry system based on one-stop shops. In **BiH**, municipal one-stop shops permit sole proprietorships – often micro-businesses — to start up business and submit licenses and permits pertaining to location, construction utilities services, and tax registration. **Bulgaria** and **Moldova** have moved a step further in preparing a generic model for one-stop-shop services.

***Access to the law has been achieved but needs consolidation***

86. As a fundamental building block of a rule of law system and as a key transparency dimension, all regulated entities need to be made aware of the regulatory requirements with which they must comply. The basic safeguard to assure this is through compulsory publication of all enacted measures in an official gazette. Though gaps still exist for subordinate regulation in some countries, the region fulfils this requirement. Furthermore, today, most SEE countries publish their official gazettes on the Internet (see Table 8). Some, like **Moldova**, have made the gazette available on the Internet in their official languages (i.e. Romanian and Russian) and have translated important laws into English. **Croatia** has gone a step further by posting various guides and assisting users to get complete and proper information on administrative procedures, including forms. The government has also continued to make more and more forms available on the Internet, in some

Table 8. Access to Laws and Regulations

Country	Official gazettes and registries of regulations in Internet
Albania	www.albic.net (in Albanian only) www.parliament.al (in Albanian only) www.gjykatatirana.gov.al
BiH	http://www.sllist.ba/ (by subscription only) Federation BiH: http://www.fbihvlada.gov.ba/engleski/index.html (English and Bosnian) Republika Srpska (only 1990s Gazettes): http://www.urc.bl.ac.yu/prrs/sgrs/index.htm (Serbian only)
Bulgaria	http://www1.government.bg/ras/ (only in Bulgarian) http://www.ciela.net/index.htm (In English)
Croatia	http://www.nn.hr/ (in Croatian)
Republic of Macedonia	All editions and regulations of the Official Gazette of the Republic of Macedonia, www.slvesnik.com.mk Macedonia Legal Resource Centre provides all the regulation from 1992 www.mlrc.org.mk
Moldova	www.docs.md (in Romanian and Russian)
Romania	http://domino2.kappa.ro/mj/superlex.nsf/all/Biblioteca - the register of the Ministry of Justice (is available for free and is not available in English) www.parlament.ro - database of the parliament www.monitoruloficial.ro (The Official Gazette of Romania). Not available in English on the web
Rep. of Montenegro (SCG)	www.sllrcg.cg.yu - Official Prints of the Republic of Montenegro (also in English) www.gom.cg.yu/eng/ - Official web site of GoM www.skupstina.cg.yu – the government website, publishes government draft laws and the laws adopted over last 2 years
Rep. of Serbia (SCG)	www.parlament.sr.gov.yu www.srbija.sr.gov.yu

Source: OECD (2004) Review of Regulatory Governance in SEE Countries

cases with a fill in the blank capacity. **Bulgaria** has embarked on an ambitious E-government project fostering access to regulatory information.

87. Some SEE countries have also launched *codification efforts*. However, these mostly concentrate on restating existing laws without reviewing and simplifying them, and without supporting the new codes with user-friendly registries of regulations, formalities and forms. This is particularly worrisome, as inspectors can enforce thousands of applicable laws and regulations upon businesses. This lack of 'de facto' access to the law reduces compliance. It also indirectly foments the 'privatisation of enforcement', and makes countries vulnerable to the risk of corruption. Knowing that a business can hardly be aware of the exact universe of regulations and requirements to comply with, inspectors are tempted to solicit bribes to 'solve the problem'. To try to remedy this situation, **Serbia's** Council for Regulatory Reform set up at the end of 2003, a *Central Regulatory Registry* updating and listing all laws and regulations with positive security. **Macedonia** is planning a similar initiative to be ready by 2005. The future *Register of Laws* should ease access to the more than 1000 laws currently in force.

### **Regulatory Impact Analysis has not yet started**

88. Understanding of the impact of regulatory decisions on the private and social sector is usually poor within the public administration in the region. As discussed above, most SEE countries tend to focus mainly on legality and second on impacts on the national budget rather than on businesses and societies. In most OECD countries, the basic tool employed to examine the costs and benefits of decisions is regulatory impact analysis (RIA). RIA is a method of systematically and consistently examining selected potential impacts arising from government action or non-action, and of communicating the information to decision-makers and the public. In essence, RIA attempts to widen and clarify the relevant factors for decision-making. It implicitly broadens the mission of regulators from highly-focused problem-solving to balanced decisions that trade off problems against wider economic and distributional goals. (See Box 9). RIA has several internal and external objectives:

- Improve understanding of real-world impacts of government action, including both benefits and costs of action
- Integrate multiple policy objectives
- Improve transparency and consultation
- Improve government accountability

#### **Box 9. RIA Best Practices**

The OECD work shows that countries will get the maximum benefit from RIA in implementing the following best practices:

1. Maximize political commitment to RIA.
2. Allocate responsibilities for RIA programme elements carefully.
3. Train the regulators.
4. Use a consistent but flexible analytical method.
5. Develop and implement data collection strategies.
6. Target RIA efforts.
7. Integrate RIA with the policy-making process, beginning as early as possible.
8. Communicate the results.
9. Involve the public extensively.
10. Apply RIA to existing as well as new regulation.

Source: Objectives for RIA OECD (1996), Regulatory Policies in OECD Countries (OECD 2002), see also Cordova Jacobs (2004) *Seven quick strategies to improve the business environment in Bosnia and Herzegovina*, Prepared under contract to World Bank SEED by Jacobs and Associates.

89. RIA helps to identify potential impacts on society and on the public administration (i.e. enforcement), thereby serving to fine tune or refrain the implementation of a proposed measure. RIA is also a key tool for strengthening interministerial cohesion, reducing duplicative and contradictory policies. From an external standpoint, RIA enhances regulatory transparency and accountability of public administration ('no regulation without representation'). It contributes to reducing the danger of regulatory capture by powerful vested interests. As RIA involves a thorough consultation process, it helps to increase compliance with the

Table 9. **RIA Adoption in Selected OECD Countries**

Selected Countries	Year that RIA was adopted	Scope of coverage
Australia	1985, strengthened 1997	<ul style="list-style-type: none"> <li>• Primary laws, subordinate regulations, international treaties and quasi-regulations that have business or competition impacts. ( 150 regulations per year out of approximately 2000 regulations).</li> <li>• Business impacts arise in case of significant market impact.</li> <li>• Reviews of existing regulations should adopt the RIS framework.</li> </ul>
Canada	1978, strengthened 1986	<ul style="list-style-type: none"> <li>• RIAs is required only for subordinate regulations. Memorandum to Cabinet (MC) similar to RIAs is required for primary laws and policies.</li> </ul>
Czech Republic	Developed since 2000	<ul style="list-style-type: none"> <li>• All primary laws including their "substantial intents" and Government decrees. Partial impact analysis is done in case of some major subordinate regulations in particular areas, however, this is not systematic.</li> </ul>
Germany	1984, strengthened 2000	<ul style="list-style-type: none"> <li>• Primary laws and subordinate regulations.</li> <li>• The RIA process can be applied to the review of existing regulations</li> </ul>
Greece	Developed since 2001	<ul style="list-style-type: none"> <li>• Primary laws and subordinate regulations</li> </ul>
Hungary	1987, strengthened 1996	<ul style="list-style-type: none"> <li>• Primary laws and subordinate regulations (all acts and decrees).</li> <li>• The analysis process is applied to the existing regulations.</li> </ul>
Italy	1999	<ul style="list-style-type: none"> <li>• Primary laws and subordinate regulations.</li> </ul>
Mexico	1996, expanded 2000	<ul style="list-style-type: none"> <li>• Primary laws and subordinate regulations.</li> <li>• RIA does not apply to the review of existing regulations.</li> </ul>
Netherlands	1985, strengthened 1994-1995	<ul style="list-style-type: none"> <li>• Primary laws in major regulations. Subordinate regulations in major regulations. BET is also applied to the review of existing regulations.</li> </ul>
Poland	2002	<ul style="list-style-type: none"> <li>• All legislative proposals (primary laws and subordinate regulations). The Budget Act is excluded from that procedure.</li> <li>• RIA is not required in the review of existing regulations.</li> </ul>
United Kingdom	1985, strengthened 1996 and 1998	<ul style="list-style-type: none"> <li>• Any proposal for which regulation is an option – including both primary and secondary legislation - that would have a non-negligible impact on business, charities or the voluntary sector should have an RIA.</li> <li>• RIA is also applied to reviews of existing regulations.</li> <li>• Regulations affecting only the public sector are currently subject to a Policy Effects Framework (PEF) assessment. Brought within RIA in 2004.</li> </ul>
United States	1974, strengthened 1981	<ul style="list-style-type: none"> <li>• Primary laws in selected cases and all subordinate regulations.</li> </ul>
European Commission	2002	<ul style="list-style-type: none"> <li>• Major regulatory and/or non-regulatory proposals with significant economic, social and / or environmental impacts.</li> <li>• Proposals with a significant impact on major interested parties.</li> <li>• Proposals that constitute a new policy, policy reform and/or significant change to existing policy.</li> <li>• Proposals that involve major regulatory issues. (subsidiarity/proportionality/choice of regulatory instrument).</li> <li>• The new procedure does not apply to Community decisions that derive from the executive powers of the European Commission, e.g. adoption of EU funded projects, decisions in application of EC competition law, etc.</li> </ul>

Source: Adapted from OECD RIA Inventory (2004)

rules when they are implemented. In dynamic terms, RIA is an essential instrument to improve decision making and has helped to change the administrative culture from a legalistic and passive stance to an evidence-based, proactive and citizens' friendly perspective. As RIA becomes more widely used, it helps to better define governmental interventions and indeed contributes to defining a more adequate role for the state.

90. More than half of OECD governments now use RIA for all regulatory decisions, and most others use it in defined cases (see Table 9).

91. Regional experience with RIA in SEE is very modest (see Table 10). Although some countries have started to prepare RIAs in specific policy areas and sectors none has adopted full-fledged RIAs. **Serbia's** Council for the Economic Regulatory Reform is carrying out RIAs for key draft laws and regulation. **Bulgaria** has also started to move towards a simple RIA with the enactment in June 2003 of the *Law on Reduction of Administrative Regulation and Administrative Control of Economic Activity*. However, the enforcement of this crucial law has been delayed by the lack of implementing regulations due to be published by the end of December 2003. In **Romania**, the Ministry of Economy, in co-operation with the University of Maryland, Center for Institutional Reform and the Informal Sector (IRIS), has analyzed the costs and impacts of some key proposals. **Croatia** has worked on the preparation of RIAs with the support of the Competition Agency. This is a valuable precedent as the new World Bank project is planning to condition some of its assistance to the establishment of a RIA program. Similarly, following the WB study on Costs of Doing Business in **Moldova** it is foreseen to develop and apply a more systematic RIA.

Table 10. **Regulatory Impact Analysis**

	RIA program	Mandatory and formalized RIA*	Scope of RIA apply	Guidance to conduct RIA
Albania	No	No	None	No
BiH	No	No	None	No
Bulgaria	Pilot	Yes	Primary and secondary legislation	Yes
Croatia	Pilot	No	None	No
Rep. of Macedonia	No	No	None	No <sup>36</sup>
Moldova	No	Yes	Lower level regulation	No
Romania	Pilot	Yes	Laws, decrees and lower level regulation	Yes
Rep. of Montenegro (SCG)	In process	No	Laws, decrees	No
Rep. of Serbia (SCG)	For some sectors	No	Laws	No

Note: \*However, RIA is not systematic. That is, the scope of RIA concerns certain policy areas and not the totality of draft laws and regulations.

Source: OECD (2004) *Review of Regulatory Governance in SEE Countries*

### **Inspection procedures may need further improvements**

92. The drafting, adoption and communication of a law or regulation are only the first phase in a 'cradle to grave' regulatory process. A regulatory measure can achieve its intended objective only if it is adequately implemented, applied, complied with and enforced. A low level of compliance and enforcement threatens the effectiveness of regulations, public policies, and ultimately the capacities and credibility of governments.

93. Compliance and enforcement issues can be considered in terms of processes and practices as well as institutional structures. The next section will address the substantial compliance difficulties as attested by the existence of large informal sectors. On the other, hand, too many countries in the region have yet to confront the daunting challenges of the inspection side. So far, few encompassing reforms of inspection systems have been launched in the region. A set of initiatives worthy to note are the ambitious reforms of **Croatia** and **BiH** (See Box 10).



### Box 10. Ensuring Compliance and Improving Inspections in Croatia and BiH

As in all the countries in the region, inspections of regulatory compliance are the responsibility of each ministry's respective inspectorate. The consequence is a considerable duplication, overlap and sometimes contradictions between the various inspectorates. This is compounded by the fact that municipalities and cantons also have inspection functions in parallel to the central government's different inspectorates. The result is a constant burden for businesses in terms of time and harassment. It is also a waste of public resources.

In 1999, Croatia took the unique step to consolidate many of the inspection processes into a single autonomous agency: the State Inspectorate, which manages a large proportion of the inspections an investor may be subject. Formerly a department of the Ministry of Economy, the State Inspectorate is today responsible for 11 inspections and 3 "technical" inspections, including those previously conducted by the Ministries of Economy, Forestry and Agriculture, Tourism, and Work and Social Welfare. The system has not only reduced the number of visits that a business is likely to endure, but also has saved considerable budgetary resources. The number of units that conducts inspections has been reduced from 110 to 49, and the number of county offices from 22 to five.

In 2002 with the help of World Bank and the Swedish Aid Agency (SIDA) the BiH government launched an ambitious plan to reform the inspection system. Different from the Croatian case, the reform focused on improving individual inspectorates without merging them. As a first step to minimize redundancies, all ministries and agencies were required to prepare an inventory of their inspectorates (including those that function extralegally or under questionable mandates) and their mandates. The second step, to be finalized by the end of 2004, will be the creation of a single system for all inspectorates. The proposal includes the reduction of overlapping mandates between inspectorates, the coordination of visits and crosschecking of inspectors' findings. Inspectors will also be required to follow established guidelines and criteria for selecting businesses for inspection. The sanction systems will also be reviewed and here too clear criteria will be developed.

Source: OECD (2004), Review of Regulatory Governance in SEE Countries

### 1.3 Regulatory Governance Challenges Facing SEE Countries

94. The SEE region has been gradually adopting modern regulatory management practices, but progress remains patchy and slow. Backtracking has occurred in some sectors and policy areas. Of course, the complexity of the tasks cannot be understated. Improving regulatory governance implies engaging a large array of stakeholders and institutions, such as parliaments, courts, and ombudsmen. It also involves resolving tensions between a national regulatory policy and the aspiration for autonomy by sub national authorities.

95. Countries need to face four major governance challenges to improve the quality of the regulatory environment and influence the attractiveness to foreign and national investors of their region. As discussed in Section 1.2, they require a collective action by many stakeholders besides the government. Nonetheless the government needs to take the lead and mobilise support for its policies.

#### *A new administrative culture is needed*

96. A first challenge concerns the legacy of an administrative and regulatory culture honed by 'command and control', unchecked interventionism and over-regulation. Civil servants in the region continue to have difficulties operating with market economy laws, regulations and mechanisms. Low salaries of the public sector are an important constraint in attracting and retaining competent professionals. These problems are further compounded by a high degree of politicization in the civil service and the difficulties to sustain reforms through coalition governments of the region.

97. These factors contribute to the risk of "regulatory inflation". As a result, governments tend to enact laws for cosmetic reasons or as an overreaction to a crisis. This trend is aggravated by constant amendments

due to unforeseen effects detected after the measures were enacted and by the use of 'urgent procedures' to pass laws. For instance between 2001 and 2003 the **Serbia** government submitted 223 draft laws, of which 97 required urgent enactment. The Parliament approved and published 130 laws, 63 of which fell under the urgent procedure system.

### ***Difficulties to maintain policy cohesion across the government and across levels of government***

98. The lack of a unifying concept to frame the use of regulatory instruments across the administration is a second major difficulty. All over the region, most regulatory policies and/or initiatives occur on an ad-hoc basis. It is not infrequent to find that ministries operate as 'separate quasi-independent entities' with their own idea of what a regulation can achieve. This situation is compounded by the fact that few cooperation-and-coordination mechanisms are effective. Moreover, the problem is aggravated because in many countries, each ministry has a unit at the municipality level in charge of inspecting its 'own territory'. These are important reasons to explain many of the failures of one-stop shops at the local level.

### ***Coherence is further challenged by limited coordination between levels of governments***

99. Ambitious decentralisation reforms across the regions have transformed the governance landscape. Decentralisation has involved establishing the democratic representation of municipal and regional governments on the principle of 'self-government' and devolving responsibilities for management of public services to sub-national governments, including ownership of some public assets and important regulatory powers. Today local authorities have the power to issue regulations in all SEE countries except in **Albania**<sup>37</sup> and **Moldova**.

100. However, such a momentous reform has involved transitional costs which might become structural if not addressed. Additional human and capital resources will reduce them, as well as time and experience of the local regulators and inspectors. Nevertheless, capacity building might also need a new approach to improve the relationships between the central and local levels. Some harmonisation of local legislation will certainly reduce burdens and avoid local failures, for instance in key procedures such as building and zoning permits. Local level administration will also require new *modus operandi* in accordance with a less interventionist authority. Importantly, transparency and accountability need to be ingrained together with autonomy. Overarching safeguards (*ex ante*) and remedies (*ex post*) are also necessary, as the **Hungarian** case on the role of clear oversight mechanisms, attests (See Box 11). Many other OECD countries face similar challenges.

#### **Box 11. Assuring Regulatory Accountability of Hungarian Municipalities**

In the early 1990s, as all transition countries, Hungary embarked on a bold decentralisation initiative. After constitutional and legal reforms, municipalities became autonomous and 'self governed' and thus not subordinated to the central government. In addition to voluntary coordination efforts, few but important *ex ante* accountability controls tempered this dash towards implementing the subsidiarity principle at national level. The Local Self-Government Act of 1990 provides an *ex ante* notification mechanism. For instance, before enactment, municipalities need to forward their bylaws to the Territorial Office at the Ministry of Interior, which may request amendments. However, the Territorial Office is not entitled to declare any decision void or amend it. If a municipality rejects the amendments, the head of the Territorial Office may appeal to the Constitutional Court to annul the local government bylaw (or its provisions). The Competition Authority has also been a vigilant observer of regulatory abuses by municipalities captured by local interests.

101. In the region, some governments are becoming aware of the regulatory costs linked to decentralisation. In **BiH**, pilot municipalities have established municipal one-stop shops, as well as simplified and modernised their procedures.<sup>38</sup> Among other relevant initiatives in this area, the Office of the High Representative (OHR)'s



*Bulldozer Initiative* is noteworthy (See Box 12), despite the fact that the practice has not met expectations. For instance, local and central governments have encountered serious problems during its implementation due to over-emphasis on businesses' complaints. In the medium term, this bias has diminished trust on the willingness of municipal and state governments to promote public services goals.

#### **Box 12. The Bulldozer Initiative in BiH**

In November 2002, the so-called Bulldozer Committee was formed (composed of OHR, the World Bank, the European Commission, IMF, and USAID) in consultation with local stakeholders and other international agencies. The Committee seeks to trigger a bottom-up process of identifying, solving and legislating reforms that will have immediate impacts on business growth. The Committee is composed of over twenty BiH business organisations, and it has organised consultative meetings in Banja Luka, Tuzla, Mostar, Travnik, Brcko, Orasje and Zenica, and two previous plenary meetings in Sarajevo. These meetings have examined and assessed recommendations put forward by business people on ways that the BiH bureaucracy can be streamlined in order to make it easier to do business in BiH. Hundreds of suggestions have been considered. In February 2003, the Bulldozer Committee completed the selection of the first 50 specific recommendations that should be implemented in the next two or three months. In its second phase, the Bulldozer Initiative has, established working units within state administrations. These units, by creating a network of reformers based in each of the state administrations, could provide useful support to a central reform body.

Source: OECD (2004), Review of Regulatory Governance in SEE Countries

### ***The challenge of implementation***

102. A third major regulatory governance difficulty to achieve long lasting results is that laws, mechanisms and projects are implemented with difficulties and delay, if implemented at all. Too often they simply exist as paper plans. This vast problem encountered by all developing and emerging countries is caused by several interrelated factors. They are linked to the lack of political will to confront powerful private and public interests opposed to the reforms. Corruption and regulatory capture have also played a key role in delaying changes. Genuine resources, training and capacity constraints amplify and intensify the challenges. A case in point concerns the failures to enforce administrative procedure acts. These framework laws are indeed critical instruments to assure that appeal system are in place, that timely responses by authorities to requests for authorisation are made, or that consultation is assured. Errors and contradictory policies are also to be blamed. Last, setting up too high regulatory standards too soon without due consideration to real compliance capacity of the regulated often condemns the new measures to failures during their implementation. As well, lack of implementation is due to outdated and over-bureaucratic judiciary impeding the application of modern laws and regulations.

### ***Corruption breeds regulatory capture***

103. A central aim of a modern regulatory policy is to increase regulatory accountability and transparency. In that sense, these policies are vital arms to fight corruption and regulatory capture by interest groups. Despite important efforts, (see Table 11) the region still suffers from accountability and corruption problems.

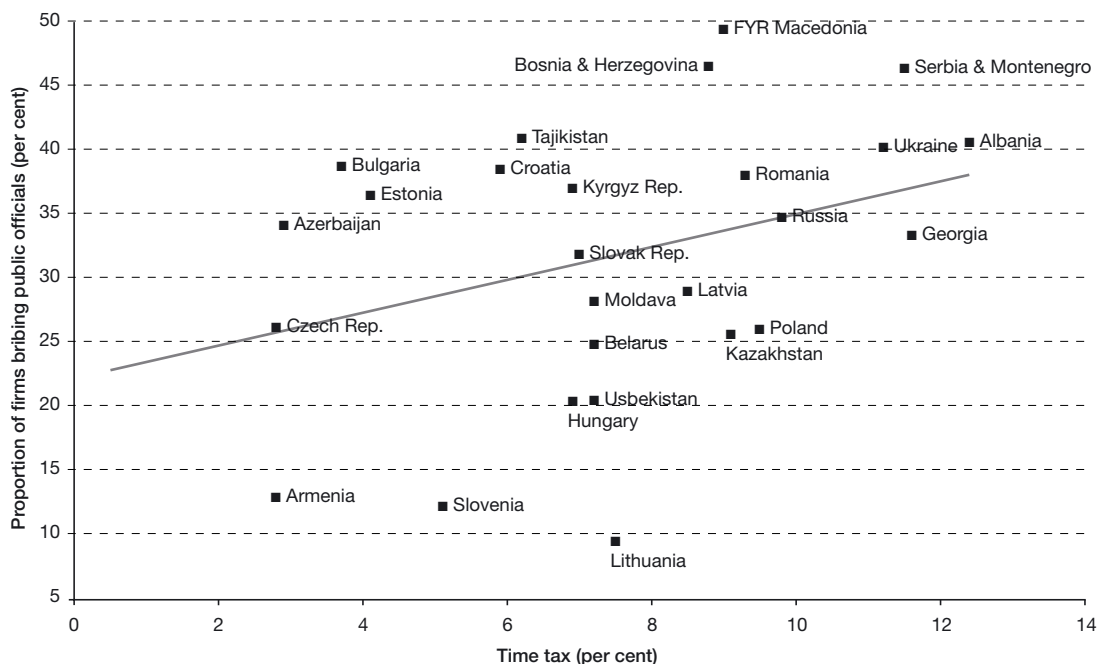
104. Estimating the degree of corruption is difficult. The term itself is quite elusive. Corruption involves different phenomena like 'speed money' to accelerate an authorisation to operate, export or import a product, a graft to avoid the effects of an inspection, or more problematically the capture of the regulator by interest groups to provide them with a rent or a specific protection. The results of a recent EBRD survey of the region confirm that most of SEE countries businesses suffer from corruption (see Figure 2): spending too much time on regulations (i.e. 'time tax')<sup>43</sup> without 'speeding' the authorities responses.

Table 11. **Some Anti-Corruption Initiatives**

	<b>Institutions and important initiatives to combat corruption (date of establishment)</b>	<b>Access of Information and other Transparency Acts</b>	<b>Administrative Procedure Laws</b>
<b>Albania</b>	Minister of State for Anti-Corruption <sup>39</sup> Anti Corruption Monitoring Group (ACMG) Albanian Toolkit for Managing Conflict of Interest	Law on the Right of Information about Official Documents (No. 8503/1999) Prime Minister's Order "On Establishment of the Public Information Offices in public institutions"	Administrative Code
<b>BiH</b>	Law on Conflict of Interest (No. 12/2002)	Law on Access to Public Information (No. 20/2001)	Law on General Administrative Procedure (No. 12/2002)
<b>Bulgaria</b>	Programme for Implementation of the National Anti-Corruption Strategy (February 2002) <sup>40</sup>	Law on Access to Public Information	
<b>Croatia</b>	Office for the Prevention of Corruption and Organized Crime (USKOK) (2001) Law on Preventing Conflict of Interest	Freedom of Information Act (15 October 2003)	Law on General Administrative Procedure
<b>Republic of Macedonia</b>	Anti-Corruption State Commission (2002) Law on Prevention from Corruption (No. 28/2002) Macedonia plans to enact conflict-of-interest regulations in 2004.	Law on Protection of Personal Data (No. 12/1994, and No. 4/2002)	Law on General Administrative Procedure (No. 22/1987) <sup>41</sup>
<b>Moldova</b>	National Anti-Corruption Commission Centre for Fighting against Economic Crimes and Corruption		
<b>Romania</b>	National Programme for Corruption Prevention and the National Action Plan against Corruption (December 2002)	Law 544/2001 on Free Access to Public Information	Law 29/1990 on administrative procedure
	Romanian Toolkit for Managing Conflict of Interest (April 2003)	The Law on Silent approval procedure (Law no.486/2003);	Law 486/2003 on silent approval procedure
	Anticorruption Law 161/2003 (regarding transparency in exercising public functions, in the judiciary and in business, and the prevention and punishment of corruption) (April 2003)	"Sunshine Law" (Law 52/2003 for transparency of the decision-making process in public administration)	
	The National Anticorruption Prosecutor's Office  The National Authority for Control	Law no. 252/2003 setting the compulsory use by businesses of the Unique Control Register	
<b>Rep. of Montenegro (SCG)</b>	Anti-corruption Agency (2001) Anti- money laundering Directory (December 2003) <sup>42</sup>	Adoption of law on free access to information is in the pipeline	Law on General Administrative Procedure (Official Gazette No. 60/2003)
<b>Rep. of Serbia (SCG)</b>	Council for fight against Corruption, with 26 anti corruption fighting units (2001) Serbian Toolkit for Managing Conflict of Interest	Public Information Law (No. 43/2003)	Law on General Administrative Procedure (Official Gazette No. 33/1997 and No. 31/2001)

Source: OECD (2004) *Review of Regulatory Governance in SEE Countries*, SPAI <http://www.anticorruptionnet.org/> and other material

Figure 2. Impact of Bribes on Business



Notes: 1) Proportion of firms bribing regulatory public officials is calculated for each country as an unweighted share of those firms that bribed customs authorities at least frequently (answers 4 to 6 on a scale of 1 to 6) in at least one of the four dimensions (business licenses and permits, occupational safety, fire and building inspections and environment inspections).

2) Time tax is calculated for each country as an unweighted average of individual firms' responses on the proportion of senior managements' working time spent dealing with public officials.

Source: Steven Fries, Tatiana Lysenko and Saso Polanec (2004) The 2002 Business Environment and Enterprise Performance Survey: Results from a survey of 6,100 firms, EBRD, London

105. As in the case of implementation, there are many complex and intertwined roots. Corruption involves issues as different as civil service pay and incentives or the corrosion of police forces by organised crime. In terms of good regulatory governance challenges, corruption is often linked to the amount of discretionary power delegated to the administration or inspectors, and the overregulation of some aspects. This makes private businesses automatically in breach of standards that are too high, incoherent and unsystematic, or contradictory and thus a victim of inspector's abuses. Corruption can also be linked to the lack of proper consultation permitting some interest groups to capture the rule making process, or favouring conflict of interests between decision makers.

### ***The judiciary system is still weak***

106. Although important in the regulatory governance debate, a discussion of the judiciary goes beyond the scope of this report. However, there are a number of implications for regulatory governance that cannot be overlooked. The availability of judicial review can be the ultimate guarantor of transparency and accountability of administrative decisions. The judicial review operates as a check on the implementation of regulation in individual cases. In some OECD countries it has taken on a wider significance becoming an important mechanism for regulatory quality control. The effectiveness of the process arises from the ability of the judiciary to consider regulations' consistency with broad principles of constitutionality, including, notably proportionality and the right to be heard. It also arises from the courts' scrutiny of whether delegated legislation is fully consistent with primary legislation.

107. Despite the various institutional and procedural improvements, judiciary powers and institutions in the region are often ineffective, too expensive and unpredictable (see Box 13).

**Box 13. Main Challenges Confronting the Judiciary Power**

Judicial independence is at the forefront of the problems in the region's judiciary. Judicial independence and impartiality among judges are essential elements in protecting rights, safeguarding the supremacy of law, and ensuring against the arbitrary exercise of power. Some of the main problems concern:

- Awkward and complex procedures extending the duration of disputes, making settlements unpredictable and providing opportunities for capture and corruption;
- Rapid changes to the legal framework in addition to low quality of laws providing for inconsistencies and sometimes incoherence and contradictions; and
- Insufficient financial and other resources (including ICT) compounded by the effective control of judiciary budgets by political interests affecting the ability of the system to offer adequate compensation to legal professionals. This in turn has helped to compromise the courts and further erode their judicial independence and impartiality.
- Partiality, incompetence (in particular in new regulatory areas such as bankruptcy, public procurement, and competition laws) and sometimes integrity of judges.

Source: OECD (2004), Review of Regulatory Governance in SEE Countries

108. Access to justice is time-consuming for appeal as well as for redress in administrative and commercial disputes is a concrete regulatory burden. In the case of the latter, once the process ends, the enforcement of decisions are equally difficult (Table 12). Solutions will be painful and probably take time to produce real results. A key reason in fact to start reforms as rapidly and boldly as possible.

**Table 12. Time for Appeal and for Redress**

	Average time for an appeal in a commercial court (in days)	Average time for an administrative appeal (in days)	Average time for Enforcing Contracts (in days)*
Albania	NA	NA	220
BiH	NA	60-270**	630
Bulgaria	NA	NA	410
Croatia	150***	570 (1st appeal)	330
Rep. of Macedonia	120-180	120-180	509
Moldova	180	360 days (1st appeal)	210
Romania	180	NA	225
Rep. of Montenegro (SCG)	90	30 - 120	NA
Rep. of Serbia (SCG)	NA	NA	1028

Notes: \* World Bank's data. The estimates are measured as the number of days from the moment the plaintiff files the lawsuit in court, until the moment of actual payment. This measure includes both the days where actions take place and waiting periods between actions. The respondents make separate estimates of the average duration until the completion of service of process, the issuance of judgment (duration of trial), and the moment of payment or repossession (duration of enforcement)

\*\* Lower figure is the BiH average and the higher figure is RS average (excluding outliers) as per the FIAS' Administrative and Regulatory Cost Survey in 2002.

\*\*\* Estimate is an average commercial court procedure.

Source: OECD (2004) Review of Regulatory Governance in SEE Countries and World Bank (2003) Doing Business. Understanding Regulation in 2004. Washington DC.

#### 1.4 Current Performance of Regulatory Policies and Governance

109. The ultimate goal of regulatory policies and governance is to generate better economic and social outcomes. These may include higher investment, economic growth, a better quality natural environment or increased social welfare. Sections 1.2 and 1.3 above looked at progress and challenges in the region in adopting modern regulatory tools, institutions and policies. Measuring the actual outcomes of a regulatory policy is a challenging task. Nevertheless, it is important to put the regulatory agenda into a performance perspective, to develop outcome-oriented and output based policies. Some of the indicators presented below show that significant gaps still exist in the region.

##### *Regulatory quality remains relatively low in SEE countries...*

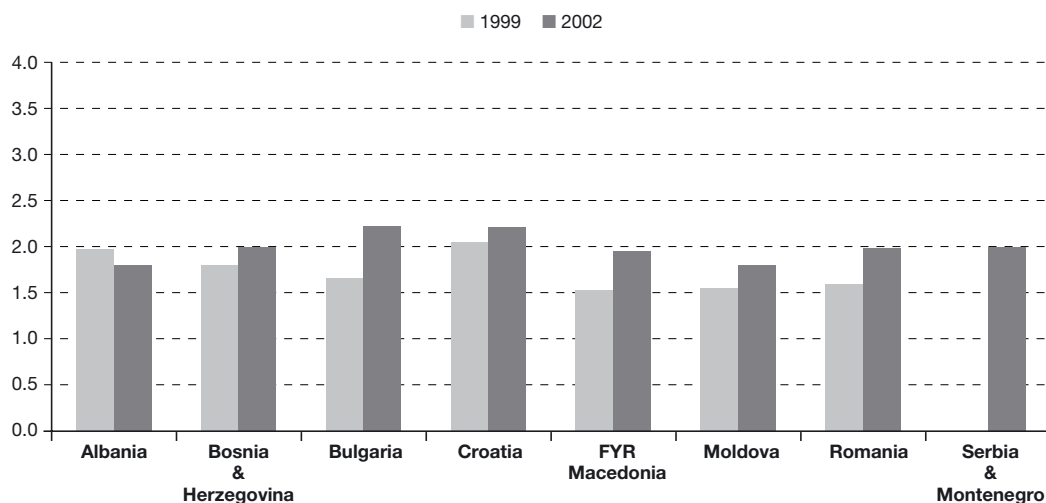
110. Several options exist for measuring regulatory performance:

- Perception indicators represent perceptions of the impact of the regulatory framework at a given point of time.
- Throughput measures quantify the actual impact of the whole regulatory framework in terms of setting up a business or the cost of enforcing a contract. They are indicative of some dimensions of performance.
- Final outcome macroeconomic indicators, such as the GDP per capita, the flows of foreign direct investment or the level of the informal economy are in theory best suited to assess performance, but can also be influenced by a large set of exogenous factors, such as macroeconomic growth in trading partners, level of training of the workforce or world trends in foreign direct investment.

111. In terms of perception indicators, the results of a recent opinion survey conducted by the EBRD show that the quality of regulation in the region has made significant progress in nearly all countries, in the past few years (See Figure 3). However, when data on SEE countries is compared with many other sources, it appears that the quality of regulation remains lower than in many OECD countries and new EU Members States.

112. The largest available source for “throughput” indicators is the worldwide study conducted by the World Bank “Doing Business in 2004”. These indicators compare the number of procedures for starting a business, the time needed and the costs. (See Table 13). The results show that the SEE countries still remain slightly below the average of the new EU Member States for which data are available. This is a relevant

Figure 3. Assessment of Quality of Regulation in SEE countries



Notes: A rating of 4 indicates best possible opinion.

Source: Steven Fries, Tatiana Lysenko and Saso Polanec (2004) The 2002 Business Environment and Enterprise Performance Survey: Results from a survey of 6,100 firms, EBRD, London

group for comparison, as SEE countries are often competing with those countries in terms of foreign direct investment. However, some SEE countries have recently made remarkable progress in reducing the time for opening a business, that needs to be noted.

Table 13. **Starting a Business, Indicators in 2004**

	Number of procedures	Time (days)	Cost (% of income per capita)	Minimum Capital (% of income per capita)
Albania	11	47	65	51.7
BiH	12	59	51.8	379.1
Bulgaria	10	30	8.3	134.4
Croatia	13	50	18.2	50.7
Rep. of Macedonia	13	48	13.1	138.4
Moldova	11	42	26.2	86.3
Romania	6*	27*	11.9	3.3
Serbia and Montenegro	10*	44*	13.3*	357.1*
Average New EU Members**	9	56	20.4	137.9

Note: These indicators measure the procedures, time, costs and minimum capital requirements to register a business formally.

\*\* The new EU members include the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovak Rep., and Slovenia

Sources: World Bank (2003) Doing Business in 2004. Understanding Regulation. Washington These data were based on a broad collection of indicators from consultants in over 182 countries, through cooperative partnerships involving several departments of the World Bank, donor agencies, private consulting firms and business and law associations. For more detail, consult <http://rru.worldbank.org>

Methodological comment: Delegates from SEE countries have advised to interpret some of the data with caution, given the fact that SEE countries are experiencing a rapidly changing business environment.

\* Romania: Data from Romanian Center for Economic Policies are 5 procedures and duration of 20 days for starting a business. Procedures 1, 2 and 3 can be launched simultaneously. While waiting for the issuing of the certificate of fiscal record (procedure 3), an entrepreneur can accomplish the other two procedures (1 and 2). Moreover, in the same time-frame of 5 working days (procedure 3 – emergency process), an entrepreneur can embark on an additional mandatory procedure, elaborating of the statute of the future company. As a result, this adds one procedure, while reducing the length of the total start-up procedure with 2 days.

\* Montenegro: The number of procedures is 5, the time 1-4 days and the cost 11.21% of income per capita according to the Ministry of Foreign Economic Relations and EU Integration. Minimum Capital: 1€ (for a Limited Liability Company)

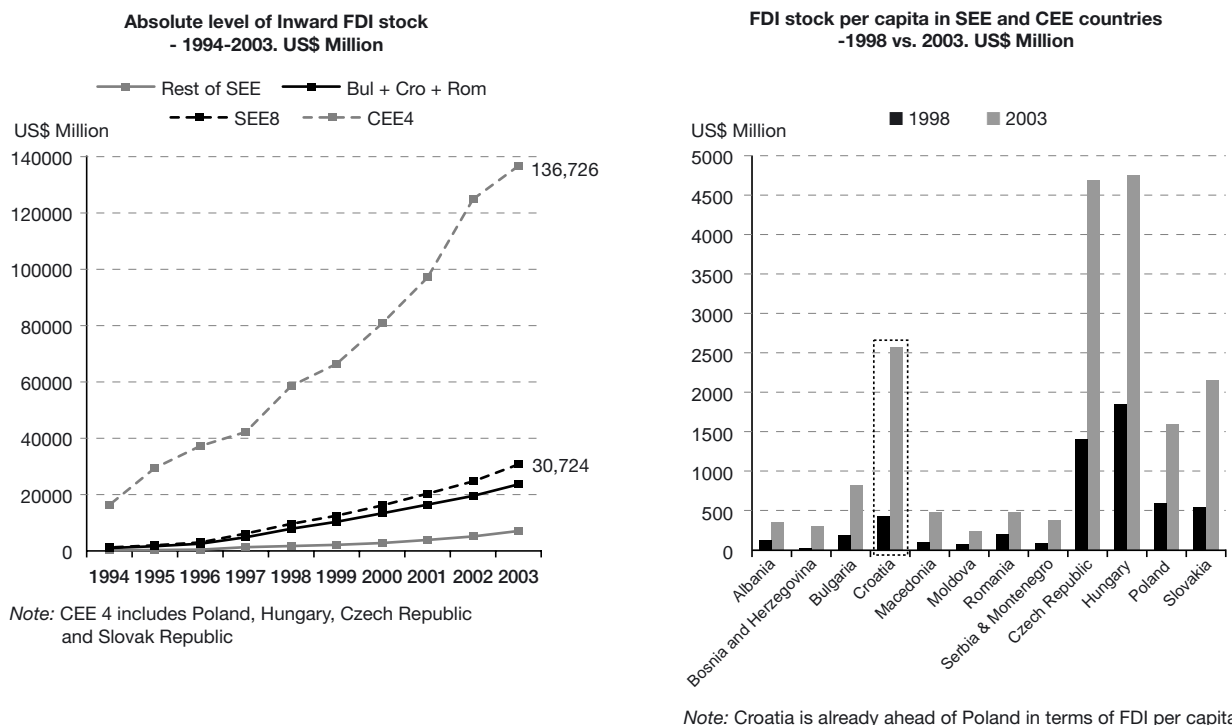
### *...which is hindering FDI and giving incentives to the informal economy*

113. The trends in foreign direct investment and the level of the informal economy represent a third type of indirect performance measure. Although recent data points to a recent increase in foreign direct investment in the region, which represents an encouraging signal, several points of caution remain. Foreign investment into the region, though rising, is not flowing as it should, and the region may not yet have reached the possibility for fully exploiting its potential for growth. The FDI per capita is slowly catching up with the CEE state levels, and Croatia currently has a higher level of investment per capita than Poland. However, the total FDI stock of the SEE States is still far behind that of CEE (1) in absolute terms (See Figure 4)<sup>44</sup>. Despite the fact that for the first time ever four countries in the region exceeded well an annual level of \$1 billion dollars (**Bulgaria, Croatia, Romania** and **Serbia** and **Montenegro**), the bulk of FDI is still driven by privatization and some single major projects (e.g. in **Serbia**). Competitive labour costs and a privileged geographic position close to the widely open EU market should be no reason for complacency. Competition for attracting flows of foreign direct investment is now part of a fully integrated global economy, which also involves major trading partners such as China. Improving the quality of the regulatory framework remains therefore crucial if the region is to remain attractive in terms of FDI in the future.

114. A second indicator of the performance of the regulatory environment is the size of the informal economy, which in the region is quite substantial, reaching between a third to slightly less than half of the overall economy (see Table 14). This share is notably superior to other transition economies, and well above the levels observed in Western Europe. Research shows that high regulatory compliance burdens increase the costs of doing business in the official economy, thus giving an edge to the informal economy. This reduces

the international competitive advantages of national firms, which at the same time compete unfairly with the informal sector. Furthermore, recent studies show that the correlation between the size of the informal economy and the amount of corruption is strong and consistent, further reducing the quality and the trust in public governance<sup>45</sup>. This also means foregone tax revenue, which could have been used to increase the quality of public services. This can lead to a paradoxical situation with increased tax rates in the official sector, with at the same time a deterioration in the quality of public goods, such as major public infrastructure for transport and communication. Paradoxically, some governments have also tried to fight the informal economy with more regulations, amplifying the unwanted impacts.

Figure 4. Absolute and per capita FDI in SEE and CEE



Source: Monitoring Instruments, Investment Compact (April 2004)

Table 14. Informal Economies in SEE and Transition Countries<sup>46</sup>

	AL	BIH	BG	HR	MK	MD	RO	SCG	CEE average
Informal economy (as % of GNP)	33.4	34.1	36.9	33.4	45.1	45.1	34.4	29.1	22.7
Percentage of firms making bribes frequently	36.4	22.4	32.8	12.9	22.7	34.3	36.7	15.9	22.6
Average bribe tax as a % of annual firm revenue	3.3	0.9	1.9	0.6	0.8	2.1	2.6	1.5	1.1
Corruption Perceptions Index (10 highly clean - to 1 highly corrupt) and rank (out of 102)	2.5 (81)	n/a	4.0 (45)	3.8 (51)	n/a	2.1 (93)	2.6 (77)	n/a	4.0 (45)

Source: EBRD (2002); Schneider (2002a); Transparency International (2002)

115. In assessing progress, the EBRD<sup>47</sup> report analyses the progress in infrastructure reform and the results of the new legal indicator survey as core factors for regulatory and structural reform. Regulatory reform in network sectors involves the setting up of independent regulators and a proper regulatory framework, and is key to vital services for businesses and citizens, such as telecommunications, electricity, water or



communication infrastructure. The indicator survey also tackles the reforms in secured transactions, where some SEE countries lagged behind at the time of the survey. These elements are also indicative of the current state of the regulatory framework and the quality of regulations and show that significant progress can still be achieved.

116. The strong growth experienced in the recent period by the SEE region, with major countries in the region experiencing growth rates well above those observed in Western Europe represents nevertheless a positive signal of hope in the future. Past efforts are gradually paying off, even if further efforts are needed to sustain the momentum and raise the long term economic potential of the region.

### 1.5 Lessons Learned: The Need for a New Comprehensive Approach

117. The challenges for a government to implement a sound regulatory policy and to improve regulatory governance are not new. To reiterate, SEE governments have embraced regulatory reforms and best practices to implement them. However, the international context is changing rapidly. Other regions in the world are competing vigorously for investment and are able to generate a rate of growth that enlarges their domestic markets significantly. The likely economic boost following the EU enlargement may widen the gap between the new members and the SEE countries. SEE countries have no choice but to accelerate regulatory reforms.

118. Up to now, SEE governments have pursued reforms through a list of actions to be achieved. This 'item-by-item' approach has been helpful to push structural and sectoral reforms in the region. Governments and the donor community have also favoured this tactic. Many elements favour its use. A list of actions to be implemented using a timeline and under clear responsibility of an institution helps monitor results effectively and transparently, stressing accountability. Delays in one sector do not compromise the building of the whole edifice. When government's capacities are weak, a 'command and control' approach helps to focus on single actions and thus allows for quicker but identifiable results.<sup>48</sup>

119. However, this particular approach has its drawbacks. It impairs the forging of a coherent vision about where to go and what sequence to follow. It also does not stimulate a new regulatory culture across the administration. Many OECD countries have found that a top down horizontal strategy organized around a high quality regulatory policy can help accelerate the pace of reform, better prioritize changes according to higher benefits, and distribute transition costs more fairly over time and across sectors.

120. A regulatory reform strategy must be grounded in an understanding of the role and limits of regulation as the central interface between the government and the private sector. A regulatory instrument is often the preferred type of intervention mechanism by the state insofar as other types of public instruments (fiscal, budgetary and monetary) are constrained by international tax competition, budgetary restrictions and the macro economic stability needs. Regulatory policy need to concentrate on market-based regulatory solutions, which means favouring not only pro-business initiatives but mostly pro-market ones.

121. An encompassing multi-year regulatory strategy supported at a high political level can be helpful in achieving these goals (without forgetting the importance of grasping opportunities while they arrive). The region already has several bodies that can be expanded and developed into strong institutions to drive reforms. A good example is Serbia's Council for Regulatory Reform.

122. OECD countries have benefited from coordinating regulatory strategy with other key economic policies such as competition, market openness (including FDI promotion), and public sector reforms. As developed in Section 1.2, an overarching regulatory reform policy provides principles and mechanisms to oversee the quality of all regulations (i.e. vetting the flow of new laws and regulations and advocating deregulation and re-regulation). This ensures that the quality of the whole regulatory system will be sustained through time.

123. Attention to the flow of regulations supports the use of tools such as forward planning, notice and comments and Regulatory Impact Analysis. Efforts to improve and reduce the stock of regulation encourage

the adoption of tools like the guillotine, as well as administrative simplification instruments, such as the one-stop shop, “silence is consent” rule, registries of formalities and regulations.

124. International co-operation and co-ordination can strengthen this type of approach. As the OECD regulatory reform programme has demonstrated, individual efforts can be improved and sustained through collective monitoring and peer pressure, helping in particular to build political support internally and externally and sharing best practice and solutions among countries.

## NOTES

4. See OECD (2004) *Ex post Evaluation of Regulatory Policies in OECD Countries*. Paris (forthcoming).
5. OECD (1995), *Recommendation of the OECD Council on Improving the Quality of Government Regulation*, incorporating the OECD Reference Checklist for Regulatory Decision-Making, Paris. OECD (1997), “Regulatory Quality and Public Sector Reform” in *The OECD Report on Regulatory Reform*. Volume 2, Chapter 2, p. 234. OECD (1997) *Report on Regulatory Reform*. Paris; OECD (2002) *Regulatory Policies in OECD Countries. From Interventionism to Regulatory Governance*. Paris.
6. The concept of *Centre of Government* is used throughout the report to refer to the top and central body of the Executive Power. It refers to Cabinet, Council of Ministers, Government, etc. A *Center of Government* is served by a specialized secretariat referred often to General Secretariat, Prime Minister’ Office, Cabinet Office.
7. See OECD reports on government capacities to assure high quality regulation in Czech Republic, Hungary and Poland available at [www.oecd.org/regreform/countryreports](http://www.oecd.org/regreform/countryreports).
8. In addition to the three drivers described in the section, other key processes supporting regional cooperation and integration include the Donor Coordination Mechanisms set within the framework of the G8, NATO Enlargement, and South Eastern Europe Cooperation Process.
9. The Department for the Approximation of Legislation has been moved from the Ministry of Justice to the Ministry of Integration.
10. The Deputy Minister of Foreign Affairs is also responsible for the European integration issues and is the Chief negotiator of Bulgaria’s accession to the EU.
11. At the level of the Union of Serbia and Montenegro, the Minister for Foreign Economic Relations is responsible for treaty relations with the EU.
12. Stability Pact/Investment Compact (2002) *Declaration Attracting Investment to South East Europe: Common Principles and Best Practices*. Vienna.
13. An additional enforcement mechanism consists in mandating the office in charge of publishing the official gazette to ensure that all the mandatory opinions accompany an approved law or regulation.
14. According to the *Government Guidebook* of 26 October 2000, Article 27 (4).
15. Apart from the legal and budgetary controls, all Macedonian drafts should be in concert with the EU legislation. The main coordinative function and control over harmonisation processes have been vested in the Department of EU integration of the Government of Macedonia.
16. Establishment of an external auditing institution affiliated with the Parliament is in the pipeline.
17. In Moldova the government mandated the assessment of potential impacts of regulations on business and citizens in its decision No. 141 of 17.02.2004 on reforming the state regulation of entrepreneurial activities. The implementation by the Government Commission for the Co-ordination of the activities regarding measures to reform the state regulation of entrepreneurial activities is however still pending.

18. Concept No.141/2004
19. Law on Administration (November 1998 and later amendments)  
Law on the Administrative Servicing of Natural and Legal Persons (November 1999)  
Strategy for the Modernisation of the State Administration (June 2002, updated September 2003)  
E-Government Strategy of Bulgaria (December 2002)  
Concept for Improving Administrative Services through One-Stop Shops (December 2002)  
Generic Model for One-Stop-Shop Services (December 2002)  
Programme for the Modernisation of the State Administration (January 2003)  
Action Plan for the Modernisation of the State Administration (January 2003, updated September 2003)  
Action Plan for the Implementation of the E-Government Strategy until 2005 (March 2004)
20. Government Decision No 586, 21 May 2003.
21. Implementation of a programme on reconstituting the company registration system of BiH is nearing completion.
22. At the central level, the work to introduce one-stop shops is in progress. At the local level, the implementation of this system is done in a proportion of 15 %, in some municipalities.
23. Law on Trading companies adopted on 30.4.2004 and in force from May 2004.
24. Law on Trading companies adopted on 30.4.2004 and in force from May 2004.
25. Quarterly reports.
26. EBRD (2003) *Annual Report*. London.
27. A shorter statutory period or a waiver to the notice and comment can be accepted by the government for urgent regulations. However, criteria and special features, such as a sunseting of the emergency rule, need to be implemented for this kind of measures.
28. Article 58, 59 and 60.
29. Law no. 52/2003 on Transparency, known as the 'Sunshine law' for making the government decision-making more transparent.
30. Law no. 486/2003.
31. The 2003 Action Plan (Government Decision No 586/2003) builds on the *Programme for removing administrative barriers* (Government Decision No 1187/2001) and its updated in 2002 update (Government Decision No. 209/2002). The program has been supported by the World Bank and the EU *Phare Assistance Programme*.
32. The Prime Minister Order no. 73 of 15.03.2004 "On the establishment of the interministerial working group on the simplification and standardisation of the criteria and procedures of the public services offered by the central administration institutions."
33. Mandatory indication of the name of an *institution* in charge of authorisation.
34. See articles 28 and 29 of the law.
35. Article 16 of the new *Handicrafts Law*, [to be voted by Parliament soon], requires that once a request for registration is submitted, the authorities must respond within 8 days, otherwise the authorization is granted and registered.
36. Although certain guidance materials for conducting some impact analysis are in place, they are said to be implemented rather poorly, or not at all.
37. In Albania the main part of the new fiscal framework at the local level consists of the Law on Local Taxes Framework (No. 8982, date 12.12.2002). This Law marks a positive step towards the financial autonomy of the local government,

within the decentralization context, according to the autonomy principle and local self-government sanctioned by the country's Constitution, European Card of Local Self-Government, and Organic Law No. 8652, date 31.07.2000, "For the organization and functioning of the local government". The new fiscal framework enlarges the authority of the local government units in defining the basis and the level of local taxes and in collecting and administering them. Some national taxes which have become local ones are: Local tax on small business, Transactions related to real estate, Tax on annual registration of the vehicles. (Source: "What business operating in Albania need to know", chapter 5, page 32-financed by SEED/IFC-World Bank Group).

38. For instance, the municipalities of Gradacac, Gracanica, Laktasi, Prnjavor, Prijedor, Zenica, and Brcko.
39. It is a ministry without portfolio located in the Prime Minister's Office.
40. Downloadable at <http://www.anticorruption.bg/eng/accomission/program.doc>; an English-language version of the Strategy can be found at: <http://www.online.bg/Docs/Anticorruption-eng.htm>.
41. New Law on General Administrative Procedure is expected to be enacted by the end of 2004.
42. The Law on conflict-of-interest is expected to be adopted by the Parliament soon.
43. One indication of the extent of business regulation that firms undergo is the amount of working time that senior managers spend dealing with public officials regarding the application of laws and regulations. The greater the amount of time spent by managers – the so-called "time tax" – the greater is the opportunity cost of complying with laws and regulations.
44. Investment Compact (2004) *Progress In Policy Reform In South East Europe. Monitoring Instruments*. Paris. Fourth Edition. (April 2004)
45. Friedrich Schneider and Dominik H. Enste, 2000, "Shadow Economies: Size, Causes, and Consequences" In *Journal Of Economic Literature* Vol. XXXVIII (March 2000) Pp. 77–114
46. Source: Derived from Schneider (2002a and 2002b); frequency of bribes and bribe tax derived from EBRD (2002) Transition Report. Other estimates of the weight of the grey economy are available from different sources, but are not quoted in this report as the methodologies used differ across countries and made comparisons impossible. CEE average for Czech Republic, Hungary, Poland and Slovak Republic.
47. See EBRD Transition Report 2003, transition and regional cooperation.
48. The item-by-item approach is also preferred when countries need to harmonize with long lists of EU chapters and sectoral and individual regimes, laws and regulations.

## Part II

### AGENDA FOR REGIONAL ACTION

#### 2.1 A Regional Overview of SEE Governments' Key Priorities Based on Country Regulatory Governance Action Plans

125. The assessment offered in the previous section illustrates the need for an ambitious reform programme supported at the highest political level to accompany a successful transition from a planned economy to a market economy. Since the launching of the *Regulatory Governance Initiative* in South East Europe in 2001, the region has experienced progress in the implementation of regulatory governance reforms. Countries in SEE have started to recognise that high-quality regulation (at the national, regional and local level) is a precondition for effectively responding to a range of fundamental trends: EU harmonisation, increased competition for FDI, decreased aid transfers, increased global trade, domestic private sector development, SME promotion, regional and environmental policies, enhancement of social and labour market policies, etc. Most SEE governments have begun to invest in improving the regulatory reform regime, and a significant amount of new regulations and amendments have been implemented over a short period of time. This has however often exposed countries to the risk of low quality regulation: state institutions do not always function effectively, implementation and enforcement of legislation is weak, and a lack of transparency is associated with widespread corruption in many countries.

126. Important steps in identifying progress and challenges in the region have been made with the Investment Compact monitoring process launched in 2001. Regulatory governance has always been part of this process as part of the Public and Private Governance monitoring category. The RGI has strengthened the focus on governance issues in the SEE reform process by specifically addressing the issues of quality of regulatory processes and implementation strategies and institutions. The Governance Action Plans now developed by the SEE governments constitute a further step in this process. They add and expand the governance priorities complementing the Monitoring Instruments of the Investment Compact.

127. The 2003 *Review of Regulatory Governance*<sup>19</sup> represented a first step in identifying progress and challenges in the region, prepared in co-operation with the SEE governments. The review concluded that countries in the region found themselves at the stage where a political commitment to further accelerate the reform process could make a critical contribution. Overall, the report found that SEE law-making processes had been streamlined, internal co-ordination mechanisms established, transparency and access to public information had been improved, and major stakeholders were increasingly being consulted. Policy decisions are more often based on estimated impacts, costs and benefits, and many governments have undertaken partial impact analyses to support important interventions. Finally, efforts are being made to simplify and streamline business licences, permits and other ex ante information required by the government. The 2003 *Review of Regulatory Governance* also highlighted a number of areas where further progress can be made, noting in particular that the SEE countries need to complement de-regulation and market liberalisation with well-designed and market-oriented re-regulation and capacity building. The Report recommended the governments in the South East European region to both adopt and adapt the 10 *principles of good regulatory governance* (see Box 14) to country-specific priorities, taking note of different starting conditions.

128. The Ministerial Statement *Pushing Ahead with Reform: Removing Obstacles to FDI in South East Europe*, signed at the 2003 Ministerial Meeting of the Investment Compact, recognised “the importance of achieving further significant progress in the areas of regulatory reform, public and private governance, and combating

**Box 14. 10 Principles of Good Regulatory Governance**

**1. Build engines of reform**

Improve the speed, effectiveness and coherence of regulatory reform by establishing and/or strengthening a centralised unit responsible for making new regulation;

**2. Fight corruption**

Further strengthen anti-corruption efforts by establishing an independent body responsible for supervising transparency provisions;

**3. Build capacity and accountability of the public administration**

Increase the capacity and accountability of the public administration by ensuring the transparency of administrative decisions and making the appeal process easier;

**4. Enhance openness**

Enhance openness by passing and enforcing a Law on Freedom of Information with a clear definition of exemptions to the law;

**5. Communicate regulatory information**

Ensure access to and communication of regulatory information by establishing, publishing and maintaining a centralised register of all laws and regulations in force. "Plain language" requirements should also be imposed;

**6. Establish sectoral regulators**

Establish independent and accountable sectoral regulators to support and accelerate large-scale privatisation, enhance competition and improve regulatory efficiency,

**7. Make consultation mandatory**

Improve transparency by making public consultation mandatory and providing clear guidance to support an unbiased and systematic consultation process;

**8. Improve public procurement procedures**

Establish a public procurement oversight body. Ensure that public procurement rules are harmonised across all levels of government and that independent appeal bodies are in place;

**9. Introduce Regulatory Impact Analysis**

Introducing Regulatory Impact Analysis into the decision-making process by targeting limited resources to the most burdensome regulations, and identifying alternative regulatory and non-regulatory solutions;

**10. Target administrative burdens**

Establish a central registry of administrative procedures and business licenses and permits (one-stop shops), and initiate a comprehensive review to determine how to reduce burdens at all government level.

Source: OECD (2003) Review of Regulatory Governance in South East Europe

corruption more effectively and encourage further work in these policy areas". Ministers agreed that these areas should play a more central role in government policy and indicated that their 2004 meeting will place major emphasis on reviewing the progress achieved.

129. In order to accelerate the regulatory reform process in the region and to prepare for the 2004 Ministerial Meeting of the Investment Compact, SEE country representatives have therefore agreed to launch a political process (see Box 15), on a proposal of the Romanian co-chair of the Investment Compact. The reform commitments, referred to later on in the text as Top Policy Priorities and included in the country Governance Action Plans constitute the main results of this process and the basis for a political commitment to further governance reforms in the region. This part of the Report is primarily designed to prepare the political commitment to be adopted at the 2004 Investment Compact Ministerial Meeting.



Summary of SEE Public Governance Priorities<sup>30</sup>

Albania	Bosnia and Herzegovina	Bulgaria	Croatia	Republic of Macedonia	Moldova	Romania <sup>21</sup>	Serbia	Serbia and Montenegro
								Montenegro
1	Establishment of information offices for the private sector <sup>22</sup>	Introduce Regulatory Impact Analysis.	Remove of administrative barriers to investments (development and implementation of a new FIAS study)	Further build engines of reform, through strengthening of a Regulatory Governance Authority (Legislative Secretariat)	Improve activity of control authorities	Continuing the reform process aiming to simplify the formalities concerning registration and authorizing (licensing) of companies.	Increase efficiency of the judiciary (focus on implementation of new laws)	Continue the reform and modernization of the Public Administration (capacity of the civil service)
		Adopt and implement legislation establishing a single High Judicial and Prosecutorial Council for BiH.	Creating an enabling (institutional) investment environment	Improve transparency by strengthening of mandatory public consultation provisions	Streamline provision of paid services to market agents (minimize the number and fees)	Exercising periodical (annual) surveys to monitor and evaluate the impact of the governmental regulations on business environment aiming to reduce the administrative barriers for investors.	Reduce the backlog of legislation (draft adoption by the Parliament)	Improve judiciary system (focus on implementation of new laws and implementation capacity)
2	Improvement of complaint system within regulatory bodies (harmonizing complaint procedures in all regulatory bodies)	Set the regulatory basis related with the administrative regulation and the administrative control in compliance with the Law on Reduction of Administrative Regulation and Administrative Control of Economic Activity.	Improving efficiency of Public Administration (policy co-ordination and communication capacity)	Continue and improve implementation of RIA in (Macedonian) legislative procedure	Optimize authorization system for company start-ups	Reduce the administrative barriers at the firms' exit from the market –implementation of the updated legislation concerning bankruptcy and commercial litigations.	Adopt and implement the Action Plan for the Removal of Administrative Barriers (focus on implementation capacity and measures)	Simplify administrative procedures (in licensing, import-export and company start-ups)
		Assume full national responsibility for the State Ombudsman and make progress on the merger of the State and Entity Ombudsmen.						
3	Strengthening and further development of the collaboration network with private sector							



Table 15. Classification of Top Policy Priorities

1. Institutional capacity building	<ul style="list-style-type: none"> <li>• Creating an enabling (<i>institutional</i>) investment environment</li> <li>• Improving efficiency of Public Administration (<i>policy co-ordination and communication capacity</i>)</li> <li>• Further build engines of reform, through strengthening of a Regulatory Governance Authority (<i>Legislative Secretariat</i>)</li> <li>• Continue the reform and modernization of the Public Administration (<i>capacity of the civil service</i>)</li> </ul>
2. Enhancing access to information and consultations	<ul style="list-style-type: none"> <li>• Establishment of information offices for the private sector</li> <li>• Strengthening and further development of the collaboration network with private sector</li> <li>• Increase the diversity of e-government services</li> <li>• Improve transparency by strengthening of mandatory public consultation provisions</li> </ul>
3. Enhancing quality of regulation	<ul style="list-style-type: none"> <li>• Introduce Regulatory Impact Analysis</li> <li>• Continue and improve implementation of RIA in Macedonian legislative procedure</li> <li>• Reduce the backlog of legislation (<i>draft legislation pending adoption by the Parliament</i>)</li> </ul>
4. Reducing administrative burdens on business	<ul style="list-style-type: none"> <li>• Set the regulatory basis related with the administrative regulation and the administrative control in compliance with the Law on Reduction of Administrative Regulation and Administrative Control of Economic Activity</li> <li>• Removal of administrative barriers to investments (<i>development and implementation of a new FIAS study</i>)</li> <li>• Improve activity of control authorities</li> <li>• Streamline provision of paid services to market agents (<i>minimize the number and fees</i>)</li> <li>• Optimize authorization system for company start-ups</li> <li>• Continuing the reform process aiming to simplify the formalities concerning registration and authorizing (licensing) of companies</li> <li>• Exercising periodical (annual) surveys to monitor and evaluate the impact of the governmental regulations on business environment aiming to reduce the administrative barriers for investors</li> <li>• Reduce the administrative barriers at the firms' exit from the market –implementation of the updated legislation concerning bankruptcy and commercial litigations</li> <li>• Adopt and implement the Action Plan for the Removal of Administrative Barriers (<i>focus on implementation capacity and measures</i>)</li> <li>• Simplify administrative procedures (<i>in licensing, import-export and company start-ups</i>)</li> </ul>
5. Fostering efficient appeal possibilities	<ul style="list-style-type: none"> <li>• Improvement of complaint system within regulatory bodies (<i>harmonizing complaint procedures in all regulatory bodies</i>)</li> <li>• Adopt and implement legislation establishing a single High Judicial and Prosecutorial Council for BiH</li> <li>• Assume full national responsibility for the State Ombudsman and make progress on the merger of the State and Entity Ombudsmen</li> <li>• Increase efficiency of the judiciary (<i>focus on implementation of new laws</i>)</li> <li>• Improve judiciary system (<i>focus on implementation of new laws and implementation capacity</i>)</li> </ul>

Source: SEE Governance Action Plans, April 2004

130. Does a clear regional strategy exist for regulatory governance with a shared set of priorities and measures across SEE countries? Individual country choices for Top Policy Priorities identified for their Governance Action Plans show a rather heterogeneous picture which differs across countries depending on the historical preconditions, stage of transition, level of integration with the European Union, etc. Most of the reform focus across the region seems to be on deregulation, where quick and easily measurable results can be shown (such as administrative simplification, reform of licenses and permits). The reforms of judiciary

### Box 15. New Process Initiated by Romania

The first meeting of the Steering Group on Regulatory Governance, in Bucharest on 11 December 2003, took stock of the work accomplished by the Regulatory Governance Initiative. Further, the meeting concentrated on important aspects of the preparations for the 2004 Ministerial Meeting such as developing Regulatory Governance Action Plans, setting out governance reform priorities coupled with a clear path for their implementation and the dialogue with the business and international communities.

The RGI assisted the SEE countries in preparation of individual country Action Plans including between 1 and 3 Top Policy Priorities in the area of regulatory governance, identified by the governments. Each reform priority was to be coupled with a path specifying measures for implementation over the period of approximately 1 year, i.e. overlapping with the Investment Compact monitoring cycle. Individual country Action Plans provided the basis for the RGI to draft the present Agenda for Regional Action - an overview of main governance reform trends in the SEE region and recommendations of actions for successful implementation of reforms.

The second Steering Group meeting, held on 11 May 2004, reviewed individual country reform commitments as specified in the Governance Action Plans, for their finalization in the current report.

systems are also receiving attention, aiming at improving the enforcement of the rule of law and contracts. Comprehensive regulatory governance strategies are however still lacking, as shown by the very low priority given to the quality of regulation and the building of oversight capacity to improve the speed, effectiveness and coherence of regulatory reforms.

## 2.2. Assessment of the RGI Action Plans

131. Table 15 presents an overview of all Top Policy Priorities included in country Regulatory Governance Action Plans. A simplified typology of reform areas includes five basic categories, from institutional measures, through measures enhancing communication and quality of regulation and finally reducing administrative burdens on businesses and enhancing possibilities of fair and efficient appeal. Except for few cases in the **Croatian**, **Macedonian** as well as **Serbian** and **Montenegrin** Action Plans, relatively little importance has been allocated to building and strengthening of institutions in order to establish a comprehensive and overarching institutional framework for regulatory governance. This can be explained by the fact that considerable efforts have already been undertaken by the countries to provide for appropriate institutional frameworks in many areas of the state regulation.<sup>53</sup>

132. The reforms in this area mostly relate to sectoral regulation, where most of the countries already established their independent regulatory authorities in regulated network industries, such as telecom and energy sectors, or competition authorities. This is however where the reform efforts seem to slow. Concerns have been expressed about the independence and institutional capacity of these institutions, as well as the absence of a co-ordinated institutional framework for creating and operating sectoral regulators. Less importance seems to be attached to building in the reform drivers, such as the bodies with an overarching regulatory quality or reform responsibility. This was reflected in Part I, Section 1.2, which provides some positive evidence, although it notes as well that the understanding that strong institutions are needed to manage the regulatory process is growing in the region. This represents a welcome development in view of Section 1.5 which identified policy implementation, cohesion and co-ordination as major remaining challenges for the countries. Strong institutions may prove crucial for the implementation gap to be closed.

133. Priorities to enhance access to information and consultations include measures ranging from improving networking with the private sector in **Albania** to increasing the diversity of e-government in **Bulgaria**, which shows a certain span between different “generations” of reforms among the countries in some policy areas. Not many countries considered this area a priority – which is surprising in view of the

Part I findings, summarized in section 1.5. These findings revealed some dissatisfaction by the regulated community regarding access to information and interaction with government possibilities and pointed to a substantial scope for improvement. Section 1.3 notes in particular that, despite important efforts, the region still suffers from accountability and corruption problems.

134. Action Plans do not give much priority to enhancing the quality of regulation. Instead, many countries still seem to concentrate mostly on reducing administrative burdens on business, mostly on the market entry. An important share of all priorities falls under this category and includes reforms ranging from overall simplification of administrative procedures in **Montenegro**, through facilitating company start-ups/registrations, reforms of licenses and permits, or reform of the system of inspections in **Moldova**. Part I of the Report notes in particular important progress achieved by the countries in improving the licensing systems and investing considerably in administrative simplification programmes. **Romania**, for example, focuses its Action Plan on fine-tuning and consolidating the reforms started in this area. On the other hand though, the understanding of the impacts of a regulatory decision on the private and social sector is still quite poor in the region. This is perhaps why so little attention in the Actions Plans is devoted to the tools improving the overall regulatory quality such as Regulatory Impact Analysis (RIA). Section 1.2 of the Report notes that regional experience with RIA is very modest and that in fact no country has so far established a full-fledged RIA. An encouraging approach is taken by **Macedonia** – its Action Plan has been consequently built around the objective to improve the quality of regulations and of the overall regulatory environment, which as such seems to constitute a self-standing initiative. In implementing this initiative **Macedonia** is planning to reinforce its consultation and RIA procedures as well as to enhance the capacity of the Legislative Secretariat that should act as a regulatory quality and co-ordinating unit. Also **BiH** seems to be embarking on a comprehensive project to introduce a full-fledged RIA.

135. A number of measures relate to fostering fair, transparent and efficient appeal possibilities for citizens and businesses. These concern some important reforms to improve capacity and effectiveness of the judiciary in order to enhance the rule of law and enforceability of contracts. Priorities in this category, which seem to follow the voice of the investor community and the society at large, are a welcome development. Section 1.3 identifies a weak judiciary system as one of the major challenges to improve regulatory governance in the region. It finds in particular that judiciary powers and institutions in SEE are often ineffective, too expensive and unpredictable and calls for starting reforms in this area as rapidly and boldly as possible.

Table 16. Classification of Top Policy Priorities

	Institutional capacity building	Information and consultations	Enhancing quality of regulation	Administrative burden reduction	Fostering efficient appeals
Albania		X			X
BiH			X		X
Bulgaria		X		X	
Croatia	X			X	
Republic of Macedonia	X	X	X		
Moldova				X	
Romania				X	
Montenegro	X			X	X
Serbia			X	X	X

Sources: SEE Governance Action Plans, April 2004

136. The 4<sup>th</sup> edition of the Monitoring Instruments (2004) attributes some improvement of the SEE investment regimes to the reforms tackling regulatory procedures, putting in place new laws and institutions to build investment levels and focus more on issues affecting SMEs. It also notes that political awareness and commitment to reform has been further strengthened, also with regard to regulatory reform and at the

regional level, underpinning concrete steps to push for reform and leading to more peer review and regional dialogue on the issues of common interest. This would constitute some progress compared with the 2003 monitoring cycle results when only limited progress was reported in these areas.

137. In particular, the Monitoring Instruments show that progress has been achieved over the last year in enhancing communication and dialogue with the private sector (both international and domestic companies), even if the private sector seems to be the main driver for this improvement. According to the recent assessment, small businesses still point to little or no meaningful dialogue with policy makers, opaque regulatory systems and protracted reforms when addressing obstacles to entrepreneurship (also see Section 1.2). The lack of continuity in institutional structures, laws and policies in the region is also a subject of concern. Frequent institutional and regulatory changes also disturb the building of a professional culture of service to meet the policy and operational challenges and can be slowing reform. Overall, and similar to Part 1 of this report, the 2004 assessment encourages further reforms to ensure lasting change and to achieve a more even progress in all SEE countries. In particular a well-defined, stable and consequently implemented regulatory framework is needed to improve the legal and regulatory environment.

#### **Box 16. Monitoring Instruments, Critical Time-Bound Targets and Regulatory Governance**

The Monitoring Instruments are the core part of the ongoing and overall monitoring process conducted by the Investment Compact. They are based on the time-bound targets selected by the SEE countries. The 4th Edition of the Instruments includes five different target categories: Most Crucial Targets, Promotion of Private Investment, Enterprise Development and Small and Medium-sized Enterprise Support, Public and Private Governance and Fighting Bribery and Corruption. An important number of all targets relate to introduction or amendment of laws, institutional capacity building, enhancing communication with the regulated community or investors or removing barriers to business. They fall into the regulatory governance category, although are not always explicitly specified as such in the Monitoring Instruments. Nevertheless, Table 6 summarizing Critical Time-bound Targets in Public and Private Governance in 2004 alone is in a large part devoted to public governance measures. These measures are listed below and in many cases overlap with the Top Policy Priorities selected by the countries in the RGI process:

- Establishment of the independent authority for competition
- Ongoing implementation of the Law on Reduction of Administrative Regulation and Control of Economic Activity
- Establish a competition council
- Increase the diversity of e-government services
- Update the land title books
- Fully enforce the new construction law
- Establishment of an Energy Agency
- Review and optimization of inspection bodies' system with view to reducing the negative impact on entrepreneurial activities
- Review and update the legal framework according to the Civil Code
- Exercising periodical (annual) surveys to monitor and evaluate the impact of the governmental regulations on business environment aiming to reduce the administrative barriers at the firms' entry/exit on the market

#### ***The drivers for reform***

138. Two factors seem to be mostly driving the choices of Top Policy Priorities for regulatory governance reforms. First and foremost is European integration, with a wealth of regulation and institutions to be adapted to the EU requirements in all countries, notwithstanding the level of integration. The process of EU integration in the region, described in more detail under Section 1.2 of the Report, is identified as the most important driver for reforms in the region in general. Even minimum integration – here “association

with the EU” – requires creating an enabling environment for international trade and investment. This is why the second most important driving force for reforms in governance identified in the country Action Plans seems to be policies to remove administrative barriers to business, be it for foreign investors or domestic entrepreneurs. Unfortunately, the importance of transparency and communication remains underestimated. Policies designed to communicate new regulatory intentions, instruments and requirements have considerable potential to help regulators design high-quality regulatory frameworks as well as to encourage the regulated community to embrace “ownership” of reforms and respond with higher levels of compliance. These kinds of policies are not prominent in the Action Plans.

### Policies

139. As noted in the Montenegrin Action Plan, “a reformed administration is a prerequisite for an efficient and sustained implementation of comprehensive reforms, for establishing the rule of law, protecting human freedoms and rights, as well as for the overall democratisation of Montenegrin society.” This is how the Action Plan justifies continual reform and modernisation of public administration as a whole, as a Top Policy Priority for **Montenegro**. This priority is backed by the Government’s Strategy for Reform of Public Administration, the goal of which is to develop a professional, responsible and efficient administration, as well as the *Capacity Building Fund* established by the government in cooperation with UNDP and the Institute for Open Society, in order to promote the development of human resources and to strengthen the administration capacities – especially in the area of European integration.

140. The perspective of EU enlargement or in a broader sense of European integration – at different levels - seems a shared goal and an important reform trigger for all countries in the region. The argument is most apparent in **Bulgaria** and **Romania** but other countries refer to it as well. Bearing in mind important political goals and resource-intensiveness of the integration and harmonisation processes, the countries may often find that an overriding objective in the area of regulatory governance is first of all to adapt the legal and institutional systems to the EU requirements. The EU does not have however a “monopoly” for good regulation and itself stresses and recognises the need to seek better regulatory solutions, which makes the EU approximation a “moving target” as well. Moreover, the EU regulatory framework does leave room for country specific solutions. It establishes a common minimum standard, but does not preclude more ambitious solutions. Many SEE countries however, and in particular those in the process of the EU accession negotiations, seem to be rather overwhelmed by the pace and volume of the harmonisation process – an important lesson for these countries who still have time to find the best balance between the EU requirements and the historical and cultural preconditions of the national legal order.

141. The SEE governments act in a complex “authoring environment” requiring that reform priorities set are firm while remaining realistic. Transparency, consultation and communication in the reform process seem to receive more attention in the country action plans although the findings so far reveal an unequal pattern of transparency and consultation in the region (Section 1.2). Outside-of-government stakeholders such as business and international communities may serve as sources of helpful expertise and information. An important strategic change in this area seems to be taking place in **Albania**, with the Action Plan putting most emphasis on communication with the regulated community. Also, in **Macedonia**, reinforcing the consultation requirements is a part of a strategy to improve the quality of regulations, by bringing on board expertise outside of government as a part of a consensus-building process. In **Croatia**, enhancing consultation and communication capacity is part of the strategy to improve efficiency of public administration. On the other hand few countries refer to more comprehensive efforts. In **Bulgaria** the administrative reform programme has citizen-centred administrative services through development of E-government as its remit and in **Romania** the Action Plan refers to proposals from international institutions, business community, professional associations and civil society representatives.

142. Most of the backing for the Regulatory Governance Action Plans seems to be coming however – and quite understandably - from the national investment promotion strategies, as for example in **Serbia**, or – more broadly – entrepreneurship development programmes, for example in **Croatia**, **BiH** and **Romania**, anti-corruption strategies – in **BiH** and **Serbia**, or reforms of the judiciary as in **Montenegro**.

## Institutions

143. An overview of institutions charged with implementation of the selected Top Policy Priorities does not allow a straight forward identification of reform “champions” or leaders. Rather low priority is given to building the capacity for regulatory policy oversight (an overview of these is presented in Table 4, Section 1.2). Many of the countries mention the ministries charged with public administration; in **Bulgaria** this institution seems to play an important role in implementation of the Action Plan. Interestingly, Bulgaria also established the Council for Modernisation of the State Administration to manage the reform process at the national level and the Minister of the State Administration is charged with the “operational management”. **Croatia** mentions another specialised body charged with implementation of reforms – the Central State Administrative Office for Public Administration. In other cases public governance issues are most often covered by the ministries charged with interior affairs and the ministries of justice seem to take more leadership in many important areas of reform, as for example, the reforms of the judiciary. Ministries of economy or international economic relations often seem to take the lead. In a small but interesting number of cases, the centre of government is in charge of implementing the action plans. This is the case for the entire **Macedonian** Action Plan and for **Montenegro**, where two of the selected reform priorities are to be overseen by the government – a welcome approach where the reform necessitates an overarching, comprehensive tactic and anchoring at the highest level of government.

## Implementation strategies and planned measures

144. Countries have committed to implement a wide set of measures in order to achieve the stated goals – the Top Policy Priorities. The implementation agenda though is often longer than the short-term perspective assumed in accordance with the Bucharest Process and the monitoring cycle of the Investment Compact. That is understandable bearing in mind the wealth, complexity and resource-intensiveness of the planned measures. Nevertheless, for the purposes of this Report’s recommendations implementation monitoring, only the short-term measures will be taken into consideration.

145. Institutional measures, for example seem to be playing an important role in the government strategies for implementing reforms. Rightly, in order to achieve the reform objectives, many of the governments in the region plan establishing the infrastructure necessary for future reform implementation first. An important challenge lies ahead for **Bulgaria** to establish the infrastructure for introduction of the E-Government; **Albania** and **Moldova** are also planning to invest in the development of infrastructure enabling better accessibility of information to businesses. Establishment of the single High Judicial and Prosecutorial Council and the State Ombudsman in **BiH** seems a significant undertaking. In a large number of cases, countries are planning to establish new *ad hoc* or permanent institutions to oversee reforms. **Albania**, for example, already established three new agencies preparing for implementation of its Action Plan: Foreign Investment Promotion Agency, SME Agency, and Export Promotion Agency. **Croatia** is planning to establish two new separate agencies – Croatia Invest and Enterprise Croatia as well as a number of Regional Development Agencies. Implementation of reforms requires appropriate institutional measures. It has to be noted however that countries should at the same time establish new agencies with caution. Comprehensive strategies for institutional oversight of regulatory governance issues are still to be developed in the region as a whole and a potential proliferation of regulatory institutions may be costly and difficult to manage in the meantime.

146. Implementation of the country Action Plans will require substantial regulatory changes. In most cases new laws will have to be drafted and adopted by parliaments or important amendments introduced to the existing ones. In some cases secondary regulations will have to be adopted by the government (in government decrees or decisions). In many cases adoption of new regulation will overlap with the EU harmonisation requirements. Often, regulatory changes are linked to or supported by other international projects conducted in co-operation with the World Bank, FIAS, UNDP, Council of Europe or OSCE. Drawing on international experience and best practice will be particularly crucial as far as the regulatory measures are concerned. Significant efforts will have to be made by the SEE governments to sustain transparency and coherence of national legal orders when important and numerous changes are introduced. An interesting



example of the risks associated with the reforms comes from **Serbia**, now striving to deal with the backlog of legislation in the Parliament. Section 1.3 also highlights the need for a new administrative culture and a different approach to regulation, as governments tend to enact laws for cosmetic reasons or as a reaction to a crisis. Part 1 assesses the progress made in this area as patchy and slow. The **Macedonian** Action Plan constituting a comprehensive “better regulation” strategy is a very welcome development in this respect.

147. In view of the above, some concern can be expressed about the scarcity of *ex ante* research and assessment when regulatory measures are planned. These are foreseen in a limited number of cases. An interesting example comes from **Romania**, where a comprehensive project is carried out in co-operation with WB, FIAS to assess the business environment, including the business views and the regulators’ perspective. Also **Croatia** is planning to launch another study of the investment environment with FIAS assistance. Similarly, few follow-up measures are planned throughout the countries to address the issues such as information about new regulation, training of staff charged with implementation or evaluation of reforms. Here, **Montenegro** seems to stand out with an appropriate training programme foreseen in implementation of the all three Top Policy Priorities of the Action Plan. **Croatian** and **Macedonian** Action Plans also include measures to address training and enhance clarity and availability of information about new regulatory requirements. These are very important in assuring that reforms get properly implemented. In particular, appropriate capacity of institutions has to be developed at all levels for a consistent and efficient institutional environment (system) with well functioning institutions built on quality human capital.

### NOTES

49. OECD (May 2003): *Review of Regulatory Governance in South East Europe* <http://www.investmentcompact.org>.
50. The numbering of the Top Policy Priorities does not denote an order of priority. All highlighted priorities overlap with Critical Time-Bound Targets in Public and Private Governance of the 4th Edition of the Investment Compact Monitoring Instruments (also see the following table for comparison).
51. All the three Priorities overlap with the Most Crucial Targets.
52. This Priority overlaps with the Most Crucial Targets selected by the SEE countries for 2004.
53. See OECD report on *Regulatory Authorities in South East Europe*, October 2003 <http://www.investmentcompact.org>.



## CONCLUSIONS

### *Suggested directions for change*

148. This report has provided an overall assessment of progress and challenges for regulatory governance in the region. The priorities set out in the Regulatory Governance Action Plans anticipate significant change. These priorities represent an answer to the current challenges of the region, in terms of a costly and complex regulatory framework, lack of transparency and deficiencies in enforcing the rule of law.

149. Countries therefore need to face four major governance challenges to improve the quality of the regulatory environment and increase the attractiveness of the region to foreign and national investors. A first challenge concerns the legacy of an administrative and regulatory culture honed by 'command and control', unchecked interventionism and over-regulation. A second major difficulty is the lack of a unifying concept to frame the use of regulatory instruments across the administration. A third major challenge is that laws, mechanisms and projects are implemented with difficulties and delays, if implemented at all. Finally, despite the various institutional and procedural improvements, judiciary powers and institutions in the region often remain ineffective, too expensive and unpredictable to address the needs of the business community.

150. In response to these challenges, countries are planning to further strengthen administrative simplification programmes and to reform procedures for licenses and permits, building on the existing achievements. In fact, most SEE countries have been running ever more ambitious administrative simplification policies and programs. The Foreign Investment Advisory Service (FIAS) in particular has been at the forefront of helping SEE countries to move forward on administrative simplification initiatives.

151. The reform of judiciary systems still represents a major challenge to ensure appropriate enforcement of the rule of law and contracts. Access to justice is time-consuming for appeals as well as for administrative and commercial redress. This is a concrete regulatory burden. Reforms may involve costly solutions, and will probably take time to produce real results. This is an important reason why reforms should be undertaken as rapidly and boldly as possible. The attention given to the reforms of the judiciary in the Action Plans represents a welcome development in this context.

152. Considerable efforts are also planned to implement the Top Policy Priorities, including investments in infrastructure, institutions and law drafting. The importance of both *ex ante* and *ex post* regulatory quality measures needs to be underlined. Impact assessment, consultation, enhancing access to information about new regulatory requirements and training are all key to the success of current and future reforms.

153. The findings of this report would tend to support the view that an 'item-by-item' approach has been followed up to now. This approach has been helpful to push structural and sectoral reforms in the region. When government's capacities still need to be developed, this approach helps to focus on single actions and allows for quicker and identifiable results. A list of actions to be implemented according to a timeline and under clear responsibility of an institution helps to monitor results effectively and fosters transparency and accountability. This approach has also been very productive under the Investment Compact monitoring exercise. The additional effort to be undertaken by the countries when implementing the Governance Action Plans tends to follow the same approach.

154. However, countries in the region might also consider complementing the current approach with a more comprehensive top-down strategy to reforming the regulatory environment in order to improve

economic efficiency, innovation and competitiveness. Few Top Policy Priorities contained in the Governance Action Plans concentrate on the measures addressing the overall quality of regulation and establishing oversight capacities to improve the effectiveness and coherence of regulatory management.

155. Important challenges lie ahead for enhancing the overall transparency and quality of the regulatory governance framework. In particular, public and regulatory institutions need to be strengthened, and enforcement of regulation, both primary and secondary, addressed. The specific legal, economic and institutional context of each country and state needs to be taken into account. Overall strengthening of regulatory framework and increasing its transparency should also help fight against corruption. These elements are all crucial for raising the confidence of private investors in the region and in reducing the informal sector.

156. Policy-makers need to identify areas where reform is likely to produce the greatest economic and social benefits, and in particular in relation to the development of small and medium size enterprises. The five following areas are key to the success of reforms:

***Building institutional capacity at central and local government level to support regulatory efforts***

157. Further efforts to improve institutional capacity at central and local government levels will help to address the broad challenges of reforms. Capacity building may involve reinforcing or establishing bodies charged with implementation and coordination of regulatory reforms and with an oversight function in terms of regulatory quality. In particular, the report recommends investing in developing institutional capacity of a body encompassing regulatory quality and co-ordinating functions.

***Increasing further the availability of information on regulation***

158. Important efforts have to be undertaken to enhance the overall transparency of the regulatory environment, noting that transparency promotes better compliance with the rule of law and reduces corruption.

***Strengthening consultation procedures and impact assessment tools that lead to better targeted regulations***

159. In undertaking important reforms, countries may consider the use of proven tools which improve the quality of new regulations. This might involve setting up procedures for Regulatory Impact Analysis (see paragraphs 86, 87) and applying it to major pieces of primary regulation, as well as enhancing consultations with stake-holders.

***Reducing administrative burdens on business, and simplifying registration formalities***

160. SEE countries have achieved important progress in this area. However, efforts still need to be made to streamline administrative procedures further and reduce administrative barriers for entrepreneurs, noting in particular the relatively largest burden on small and medium-sized enterprises. This could include further reductions of the numbers of licenses and permits and facilitating company registration, in line with EU regulations.

***Fostering efficient complaint and appeals procedures***

161. Certain steps are already initiated or planned by countries in this area. The possibilities of fair, transparent and efficient judicial recourse will best be served by ambitious reforms of the judiciary system as a whole. Efficient judiciary systems are the ultimate guarantors of accountability, regulatory quality and proper enforcement of the rule of law.

## COUNTRY ACTION PLAN SUMMARIES

### TOP POLICY PRIORITIES IN REGULATORY GOVERNANCE IN ALBANIA

Governance Priority	Context of this priority	Measures planned in order to implement priority
<b>1. Establishment of information offices for the private sector</b>	There is the necessity for an increase in transparency and simplification of information procedures on business related matters.	<p>Creation of a working group in charge of preparing a feasibility study needed for the opening of such offices, including representatives from the main institutions and chaired by the Deputy Minister of Economy.</p> <p>Collect the information from the main institutions and indicate the institutions in which the opening of these offices is a necessity for compilation of a summarized report for the Prime Minister.</p> <p>Revision and evaluation of relative experiences of other countries in cooperation with international institutions such as OSCE and World Bank.</p> <p>Finalization of ToR and opening costs for the information offices in each institution (ToR and costs may differ amongst institutions).</p> <p>Make these offices operational in 2005. This phase will bring up financial implications which will stipulate the time needed to make these offices operational.</p>
<b>2. Improvement of complaint system within regulatory bodies (harmonizing complaint procedures in all regulatory bodies)</b>	Given the fact that the institution of an administrative court does not exist in Albania and all complaints are filed in different regulatory bodies, the need arises for harmonizing the complaints procedures in all the regulatory bodies. This is due to the high cost that the businesses have to pay because of the length of procedures. The business activity is stopped till the end of all procedures.	<p>Creation of a working group charged with the revision and the analyses of the legislation and the structures in charge of the elaboration, examination, and decision-making related to administrative complaints in all the institutions of the public administration. Finalization of the study from the working group.</p> <p>The Draft-Order of the Prime Minister for the creation of an inter-ministerial group for the evaluation of a complaint system in regulatory bodies. This act is in the approval process.</p> <p>Identification of issues and legal and institutional ways aiming at unifying or simplifying and standardizing the deadlines, the procedures and the structures that deal with administrative complaints.</p> <p>Line up of the work and responsibilities, co-ordination of steps for the preparation, compilation, discussion and approval of lawmaking and institutional initiatives for the change of the administrative complaint system. Progress of procedures for the implementation of improved administrative complaint systems, including consulting and training.</p>
<b>3. Growth and strengthening of collaboration network with private sector</b>	The reason is the strengthening and increase of the partnership between the government and the private sector and enhancement of private sector capacities aiming at becoming an active player in the process of policy making.	<p>Establishment of three agencies (Foreign Investment Promotion Agency, SME Agency, Export Promotion Agency) for business promotion.</p> <p>Co-operate with chambers of commerce, regional business agencies, business associations (such as Foreign Investors Association of Albania, Association of Italian Investors in Albania, Union of Investors and Industrialists, American Chamber of Commerce in Albania, etc). Organize seminars and roundtables.</p> <p>The co-operation with these players will serve to improve the private sector and the attraction of foreign investment.</p> <p>Co-operate with projects and special programs of the donors who operate in Albania in the field of private sector development.</p> <p>Upgrading of the internal regulation concerning the functioning of the Business Advisory Council establishment of a pilot regional Business Advisory Council</p>

## TOP POLICY PRIORITIES IN REGULATORY GOVERNANCE IN BOSNIA AND HERZEGOVINA

Governance Priority	Context of this priority	Measures planned in order to implement priority
<b>1. Introduce Regulatory Impact Analysis</b>	The Council of Ministries (CoM) BiH, with the assistance of the international donor community, has launched a broad range of business environment reforms. These reforms are generally issue-specific and are designed to respond to specific needs. As a next step, the CoM BiH is seeking to establish institutions and mechanisms that can systematically support improvements in the business environment, increased competition, and protection of consumers and the environment while facilitating higher levels of private investment in support of BiH's economic growth and poverty reduction objectives.	Drafting and Adoption of the Framework Law on Regulatory Impact Analysis that is specifically adapted to the needs of BiH.  Development of the institutions, functions and capacity for the implementation of the modified RIA and relevant good governance mechanisms to help strengthen the business environment.  Secure donor funding and technical assistance to apply the international best practice, build capacity and support implementation.
<b>2. Adopt and implement legislation establishing a single High Judicial and Prosecutorial Council for BiH</b>	Adoption of legislation establishing a single High Judicial and Prosecutorial Council for BiH is one of the Copenhagen criteria from BiH Stabilisation and Association Process in line with BiH approaching to EU. This activity is comprised in PRSP General Action Plan in scope of the area called Anti Corruption Strategy.	Entity Parliaments to approve the necessary transfer of competence to the State-level: <ul style="list-style-type: none"> <li>- The National Assembly of RS recommended to the Government the Agreement of transferring certain competencies through establishment of High Judicial and Prosecutorial Council for BiH on 08.03.2004.</li> <li>- The both Houses of Parliament of FBiH reached the consensus on Agreement of transferring the competencies of High Judicial and Prosecutorial Council of FBiH to High Judicial and Prosecutorial Council of BiH on 09.03.2004.</li> </ul> <p>Concerning adoption and start of the implementation of the Law on High Judicial and Prosecutorial Council of BiH the following measures are entered upon:</p> <ul style="list-style-type: none"> <li>- Working version of the Law on High Judicial and Prosecutorial Council of BiH has been made on 04.02.2004.</li> <li>- Proposal of Law on High Judicial and Prosecutorial Council of BiH is adopted on 44<sup>th</sup> session of CoM.</li> </ul> <p>Adopt and start to implement a BiH Law on a single HJPC</p> <p>Drafting of new Law on High Judicial and Prosecutorial Council of BiH is in process and is being prepared in association with the High Judicial and Prosecutorial Council Group/Independent Judicial Commission/OHR.</p>
<b>3. Assume full national responsibility for the State Ombudsman and make progress on the merger of the State and Entity Ombudsmen.</b>	PRSP General Action Plan covers this Activity. Presidency of BiH, pursuant to current Laws on the Ombudsmen, has appointed three ombudsmen and BiH Parliament has confirmed these appointments.	Establish expert task force for drafting law on merging of the State and Entity Ombudsmen. <ul style="list-style-type: none"> <li>- The Council of Ministers adopted the Decision on the establishment of the Expert working group for drafting the Law on merger of the State and Entity Ombudsmen and the expert working group has been established.</li> </ul> <p>To set up a legal framework that will enable the takeover of full responsibility for the State Ombudsmen (if necessary, amend the FBiH constitution and repeal Entity legislation)</p> <ul style="list-style-type: none"> <li>- Identify appropriate premises for the (merged) Ombudsman's office and adopt a Rule Book</li> <li>- Draft law on merging State and Entity Ombudsmen</li> <li>- Ensure financial independence of State Ombudsman (through budgetary projection)</li> <li>- Ministry of Finance and Treasury introduced the treasury system for the Ombudsmen institution.</li> </ul> <p>However, organizational and changes of staff in the financial unit of the Ombudsman caused delays in full implementation of the introduction of the treasury system. According to the Ministry of Finance and Treasury analysis, the complete financial operations system will be integrated, through the installed sub-system, into the financial management information system in the year 2004, while reporting will be based on the Main treasury Book data.</p>

## TOP POLICY PRIORITIES IN REGULATORY GOVERNANCE IN BULGARIA

Governance Priority	Context of this priority	Measures planned in order to implement priority
<b>1. Increase the diversity of e-government services</b>	<p>With the adoption, in December 2002, of the E-Government Strategy, and in March 2004 of the E-Government Action Plan, the Bulgarian Government committed itself to provide electronically 20 administrative services – 12 for citizens and 8 for businesses until the end of 2005. The electronic service delivery will benefit citizens and businesses, reduce service expenses, increase efficiency and curb corruption practices. The implementation of projects is centred on the automation of administrative activities in order to meet the needs of citizens and businesses by providing services based on real life events.</p> <p>Like in the other countries of Central and Eastern Europe e-Government in Bulgaria is seen as an important component of information society development and corresponds to one of the main development priorities of EU. In striving to fulfil the EU accession criteria and to adopt the EU regulatory framework, Bulgaria has been able to accelerate administrative reform concurrently with its preparation for EU membership. This reform outlines the need for citizen-centred administrative services and is a major driver for taking practical steps in e-Government development in Bulgaria.</p>	<p>Increase the percentage of the basic 20 public services for Citizens and Business, available online from 47.17 % (for citizens) and 34.32 % (for businesses) in 2003, to 68.03 % (for citizens) and 77.83 % (for businesses) in 2004 and 100 % (for both citizens and businesses) in 2005.</p> <p>Legal Framework Optimization</p> <p>Elaboration of the mechanism for evaluation of the e-government strategy using Balanced Scorecard Approach</p> <p>E-Government Infrastructure development</p> <p>Launch of e-Government Portal</p>
<b>2. Set the regulatory basis related with the administrative regulation and the administrative control in compliance with the Law on Reduction of Administrative Regulation and Administrative Control of Economic Activity</b>	<p>Improvement of the environment for economic activity through relief or removal of certain regimes which are not absolutely necessary. It will result in the improvement of investment conditions; it will provide opportunities for innovation and high-tech introduction and development. It will also save time and resources on behalf of the administration and the business community.</p> <p>Further on, the regulatory regimes should only be introduced by an act of the National Assembly – a law and the possibility of introduction of additional regulatory requirements by secondary legislation acts should be removed.</p>	<p>In conformity with his competencies, the Minister of the State Administration introduces the requirements of the Law on Restricting the Administrative Regulation and Control of Economic Activity to the interested parties.</p> <p>According to the Law on Restricting the Administrative Regulation and Control of the Economic Activity, an instructive term is foreseen in order to allow the legislation to be set in compliance with the Law provisions.</p> <p>Secondary legislation regulations which are in contradiction to the Law on Restricting the Administrative Regulation and Control of the Economic Activity are litigated to the relevant District Court and Superior Administrative Court.</p> <p>The amendment in the normative acts is executed in compliance with the national legislative procedure. The establishment of a special unit, which will make an assessment of the outcomes resulting from the introduction of new regulative regimes (impact, benefit, expenses, necessity etc.).</p> <p>Introduction of one-stop-shop services.</p>

## TOP POLICY PRIORITIES IN REGULATORY GOVERNANCE IN CROATIA

Governance Priority	Context of this priority	Measures planned in order to implement priority
<b>1. Removal of administrative barriers to investments (development and implementation of a new FIAS study)</b>	Improvement of the overall investment climate and competitiveness of the Croatian economy Simplification of procedures, more efficient administration, lower costs of doing business	Preparation of new FIAS study (investment climate in Croatia) – last FIAS study year 2000 Preparation of Regulatory Impact study Creation of the working group Strengthening FIAS Secretariat (leading position in administration and direct link with PM office) Larger involvement of private sector Finding better solutions for financing (EU CARDS etc).
<b>2. Creating an enabling (institutional) investment environment</b>	In accordance with the general strategy of the Government of Croatia regarding improvement of the Croatian Economy (especially regional economic development, improving the investment climate in all regions, reducing unemployment) and continuation of all reforms that have to be undertaken in the process of harmonization and future accession to the EU.	Creation of a working group Preparation of a new version of the Law on Investment Facilitation Establishment of two separate Agencies (Croatia Invest + Enterprise Croatia / investment - export) Establishment of Regional Development Agencies Organization of seminars, education and training
<b>3. Improving efficiency of Public Administration (policy co-ordination and communication capacity)</b>	Better co-operation and efficiency of the state administration. Improvement of communication with local administrations and the private sector. Better access to information for the public.	Organization of education, seminars and training Introduction of measures enhancing communication and access to information.: - horizontally - among different ministries and government agencies, including streamlining of the public administration structures/organisation through reduction of the number of central government ministries and agencies and reorganising the structure of the central authorities - vertically - between different levels of government (national, regional, local), providing for better co-ordination of policies and allocation of responsibilities among levels, including functional reform at the central government level, delegating responsibilities to other levels of government, local government reform Development of the measures to introduce e-government, including the measures leading to the creation of the websites of the ministries and the government, requirements for posting information on the websites, development of interactive tools for electronic consultation mechanisms



## TOP POLICY PRIORITIES IN REGULATORY GOVERNANCE IN THE REPUBLIC OF MACEDONIA

Governance Priority	Context of this priority	Measures planned in order to implement priority
1. Building engines of reform, through strengthening of a Regulatory Governance Authority (Legislative Secretariat)	Regulatory Governance Authority i.e. Legislative Secretariat will be responsible for the co-ordination and checking of all regulations proposed at the Governmental as well as municipal level. Currently, the Legislative Secretariat is partly fulfilling this task, though it needs to be strengthened, both institutionally and in terms of human resources. By attaching more responsibilities regarding co-ordination activities, in addition to an EU harmonisation final check, one could avoid the problem of over-regulation and bad co-ordination of the legislative process.	Assign the responsibilities to the Legislative Secretariat by allowing it to intervene in relevant Laws and other legal texts. Strengthen Legislative Secretariat in terms of human resources. Provide training for employees (current and planned). Promote "plain language" drafting through extensive training
2. Improve transparency by strengthening of mandatory public consultation provisions	Currently, public consultation is stipulated by the provisions of the Law on Organisation of the Civil Service as well as with the by-law of the Parliament. By the Law it is mandatory, although it is not very clear at which stage the consultation should be made. According to the by-law, public consultation could be applied only in the case of a "law of broad interest". However, it is frequently done by most of the ministries during the process of preparing the working text provisions of a certain law. The consultation is chiefly made through inclusion of NGOs, the business community and other interested parties in the Working groups responsible for the preparation of the drafts. Recently it is done through publicising the working texts on the ministerial web sites, thus allowing two-way communication. We believe that the Government should not be given discretionary powers in deciding whether it will consult or not and whom it will consult at what stage. On the contrary, consultation should remain mandatory, properly prepared, based on clear rules i.e. prescribed by law and other "soft" regulation in addition. In other words it should not be left to the willingness of the Government, since there are cases of complaints from NGOs, the business community, complaining about belated consultation or no consultation at all. Providing mandatory consultation will bring better quality in legal texts and higher legal certainty in the society. By doing so we will avoid problems with "legislative inflation".	Amend by-law of the Government, as well as by-law of the Parliament and train the civil servants in executing this task. In addition inform the citizens and other interested parties of the changes leading to the promotion of their interests. Increased capacity of human resources in the relevant institutions. Provide training for civil servants, necessary for fulfilment of this task
3. Continue and improve implementation of RIA in Macedonian legislative procedure	Detailed provisions of the Procedural Manual for Approximation of Legislation (PMAL) refer only to regulation connected to EU legislation. For reasons relating to complicated and lengthy procedures, combined with the lack of human resources, they are not applied. Since PMAL is the only official document related to RIA, barring a by-law requiring certain procedures of the Government, there is need of a "revival" of the PMAL, and its simplification, combined with the extension of its application on all regulations intended to be enacted. PMAL should be regarded as "soft legislation".	Further improve the existing PMAL, through its simplification and by imposing the obligation for RIA on legal acts. However, avoid RIA on certain parts of legislation, having in mind its complicated procedures and inadequate human resources and other confinements. Further strengthen the provisions of the by-law of the Government, related to these requirements. Amend relevant provisions of the by-law of Government and by-law of the Parliament, with the aim of including RIA as a precondition in the drafting process.



## TOP POLICY PRIORITIES IN REGULATORY GOVERNANCE IN MOLDOVA

Governance Priority	Context of this priority	Measures planned in order to implement priority
<b>1. Improve activity of control authorities</b>	Following the latest information there are 62 control bodies, from which 36 provide paid services (8240 services). Actually, 4 state bodies carry out the main control inspections. The results of the control inspections are not generalised and the schemes of control are quite spontaneous. The proposed measure is considered to have a positive impact of facilitation and improvement of the entrepreneurial activity; limit/optimize the role of the state in regulating the entrepreneurial activity. It is one of the priorities of the Regulatory Reform in Moldova and has been suggested by the WB and EU Commission.	Elaboration and implementation of a single framework law concerning control and inspection authorities Modification, on the basis of the above-mentioned law, of all legislation and regulations which concern activities of control and supervision authorities Optimization of the State control and supervision system Optimization of the number of non-fiscal controls Creation and implementation of an automated informational system for evidence of supervision and control activities (State Register)
<b>2. Streamline provision of paid services to market agents (minimize the number and fees)</b>	The priority is to serve multiple purposes: - avoid conflicts of interest - eliminate excessive services - ensure loyal competition regarding the delivering of paid services - optimisation of the paid services on a market economy basis - facilitation and minimisation of business costs  The priority belongs to the broader set of priorities identified in the framework of the Regulatory Reform.	Elaboration of the draft Law on paid services provided by public authorities Minimize number of paid services offered by government authorities to business actors Creation of the data-base regarding the paid services, offered by public authorities Improve the financing of control authorities in correspondence with the expenses required for their activities Annual re-examination of the list of paid services in view to minimize it if possible
<b>3. Optimize authorization system for company start-ups</b>	The basic principles of license issuance procedures are set in the Law No 451-XV from July 30, 2001 "On Licensing of Certain Types of Activities" and in the Ordinance No 38-g on "Approval of Licensing Conditions for Several Types of Activities" approved by the Ministry of Economy and the Chamber of Licensing on September 16, 2002. During 2001-2002 legislation in the field of licensing was changed radically. This Ordinance is a new version of the first edition approved on February 25, 2002. Through the adoption of the above Law the number of licensed business activities was reduced from 106 to 55. The Chamber of Licensing, which issues 44 of the total number, was founded in the beginning of 2002 and substituted 23 ministries, boards and state agencies. An Ordinance has gathered all licensing regulations developed by these ministries, boards and state agencies. To get involved in a licensed activity, an entrepreneur is obliged to submit an application to Chamber of Licensing. According to the Ordinance of the Licensing Chamber nr.28/36-g from 10.06.04, the number of documents to obtain a license is quite impressive (it varies between 7-14 documents). There is a strong necessity to reduce the number of documents. The license fees are determined by Law No. 451-XV and annually Budget Law. Economic entities need fewer licenses. A single license for a number of related economic activities can be issued, eliminating the need to repeat the licensing procedure for each type of economic activity. Economic entities need to undergo the licensing procedure less frequently and the duration of the issuance procedure should be reduced.	Combine more procedures (registration, authorization, licensing etc.) in one single process "ONE STOP OFFICE" Analyze the necessities and establish criteria for obtaining licenses, authorization, permissions and respective costs Restriction of authorized system by obtaining activity licenses Reduce practices that could allow the possibility to obtain a double licenses on the basis of another permission or authorization document Minimize costs and time supported by enterprises for obtaining licenses, authorization, and permissions

## TOP POLICY PRIORITIES IN REGULATORY GOVERNANCE IN ROMANIA

Governance Priority	Context of this priority	Measures planned in order to implement priority
<b>1. Continuing the reform process aiming to simplify the formalities concerning registration and authorizing (licensing) of companies.</b>	<p>The changes we have in view by implementing the mentioned Governance Priority are part of the Romanian Government strategy concerning the reform of the public sector, aiming to answer the business community's specific needs. The Priority also aims to sustain the harmonization process with the EU legislation and to develop competitive services.</p> <p>The Priority follows the Romanian Government policy according to the objective of reducing the administrative barriers and sustain the development of the business environment. The Priority has been established based on the practical expertise of the One-Stop-Office, monitored since the start-up of its activity.</p>	<p>Adapting the procedure and elaborating the appropriate methodology in order to implement the changes in the legal provisions to be approved, for separating the registration procedure of companies with the trade register from the authorisation procedure and by consequence, to reduce the necessary period for companies' registration;</p> <p>Modifying the present taxation system according to the new registration and authorisation procedures for companies;</p> <p>Setting up the necessary infrastructure in order to implement the online solution for companies' registration with the trade register (IT equipment, software package, e-sign procedure, human resources training).</p>
<b>2. Exercising periodical (annual) surveys to monitor and evaluate the impact of the governmental regulations on business environment aiming to reduce the administrative barriers for investors.</b>	<p>The proposed Policy priority was selected according to the governmental strategy for improving the business environment in Romania. In the same context, it takes into account the results concerning the impact analysis of regulations on the business climate and the proposals from international institutions, business community, professional associations and civil society representatives.</p> <p>This will allow it to identify which reforms have been successful and which may need a new strategy, as well as to identify new reform priorities to improve the business environment and keep it competitive with alternative investment locations. The information provided can be used to develop several new "performance indicators", focusing on efficiency and regulatory impact.</p>	<p>There are two complementary instruments that have been used for the self-assessment, to emphasize the comparing of laws and regulations with actual experiences of private businesses:</p> <ul style="list-style-type: none"> <li>- The Administrative and Regulatory Costs Survey (ARCS) to be handled by an independent Romanian market research institute and applied to a sample of 700 companies, to capture the businesses' experiences with bureaucratic procedures.</li> <li>- A systematic investigation with relevant government authorities ("templates exercise") be handled by the team of business environment unit from the Min. of Economy and Commerce, to gather official data related to the investment procedures.</li> </ul> <p>Both teams will complete their mission with the assistance of FIAS W.B. with specific reports to be submitted to FIAS, which will make the final evaluation including conclusions and recommendations. This evaluation will be submitted for discussion of the Government. The business community and civil society representatives will be informed and consulted also. Only after finalizing the consultation process together with the recommendations from international institutions, a new action plan/strategy will be designed. As soon as the Government will approve it, the follow up action plan for improving and developing the business environment will enter into force and will start to be implemented.</p>

## TOP POLICY PRIORITIES IN REGULATORY GOVERNANCE IN ROMANIA (cont.)

Governance Priority	Context of this priority	Measures planned in order to implement priority
<b>3. Reduce the administrative barriers at the firms' exit from the market –implementation of the updated legislation concerning bankruptcy and commercial litigations.</b>	<p>The shortening and speeding up of the bankruptcy procedures is an important action for removing the administrative barriers that impair the exit of economic enterprises from the market. The length of the bankruptcy procedures is considered one of the key factors that can influence the economic development in emerging countries such as Romania. Both the European Union and other major international stakeholders, like the World Bank, emphasize that a country might claim its economy has a functional status if the removal of the non-viable enterprises from the market is accomplished in an efficient and expeditious manner, so that the interests of all stakeholders (creditors, shareholders, employees) be best attended. In the 2002 Regular Report of the European Commission on Romania's progress towards accession, the Commission pointed out related to the economic criteria that "bankruptcy legislation has only limited effectiveness, as procedures are often long and difficult."</p> <p>Consequently, in 2002 the Romanian Government decided to acknowledge the European Chart for Small Enterprises and to design an Action Plan for implementing the actions there into. Special attention has been paid to the bankruptcy legislation and its implementation. Accordingly, after consultations with the business community, the judiciary and academic scholars, the Ministry of Justice initiated a draft law to amend the current Bankruptcy Law. After approval by the Government, the draft was submitted to Parliament and is scheduled to be enacted by the end of June, 2004.</p>	<p>The efficiency and celerity of the bankruptcy procedures, as well as the removal of the administrative barriers from the exit process of non-viable enterprises from the market, after the enactment of the new legislation shall be appraised by employing comparative statistical data pertaining to the length of the procedural stages.</p> <p>In addition, in order to assess the efficiency of the new enacted bankruptcy legislation, Romania has contracted a Phare Project - Support for the improvement and the enforcement of legislation and judicial decisions on bankruptcy. The Project's objectives focus on:</p> <ul style="list-style-type: none"> <li>- The improvement of the legal and institutional framework on bankruptcy in order to render more effective procedures;</li> <li>- The creation of a best practice manual and software application in the bankruptcy field to be used by the courts (tribunals and appellate courts) and the practitioners involved in insolvency proceedings (syndic (bankruptcy) and appellate judges, liquidators, creditors, lawyers);</li> <li>- The improvement of the skills of bankruptcy judges and of other parties involved in the enforcement of insolvency legislation, by means of professional training, in order to create a uniform jurisprudence in the bankruptcy field.</li> </ul>

## TOP POLICY PRIORITIES IN REGULATORY GOVERNANCE IN THE REPUBLIC OF SERBIA (SCG)

Governance Priority	Context of this priority	Measures planned in order to implement priority
<b>1. Increase efficiency of the judiciary (<i>focus on implementation of new laws</i>)</b>	The Government of Serbia hopes to intensify reform in the field of Justice and Home Affairs, which indirectly influences the level of foreign direct investment (FDI), through increased efficiency of the judiciary and a more effective struggle against corruption.	<p>The following laws have most recently been adopted by the Parliament of Serbia:</p> <ul style="list-style-type: none"> <li>- Amendments to the Law on Judges</li> <li>- Amendments to the Law on Public Prosecutors</li> <li>- Law on the High Council of the Judiciary</li> <li>- Law on Preventing the Conflict of Public and Private Interest</li> </ul> <p>As a next step, the government intends to assure their effective implementation and in particular:</p> <ul style="list-style-type: none"> <li>- Accelerate the enforcement procedure (via Amendments of the Law on Executive Procedure etc.)</li> <li>- Implementation of the summary repossession procedure from the Law on Financial Leasing</li> <li>- Implementation of summary enforcement provided by the Law on Registered Charges on Movable Assets</li> <li>- Adoption of the Law on Mortgage which will comprise rules for efficient enforcement, going directly before Court for enforcement without prior civil procedure</li> </ul>
<b>2. Reduce the backlog of legislation pending adoption by the Parliament</b>	Establishing a sound rule of law is an utmost priority, which is why a decision was made to accelerate and enhance the work of the Parliament in adopting important legislation. In this way, the government and the parliament hope to compensate for the time lost due to a political stalemate and the call for early elections in 2003.	<p>The Government of the Republic of Serbia is currently reassessing the laws which were withdrawn from the parliamentary procedure upon the formation of the new government (64 Law proposals were withdrawn), and which shall be resubmitted to the Parliament in the shortest possible period. In fact, several laws have already been resubmitted to the Parliament Adopt. The laws of great economic importance that will be resubmitted in the next period are:</p> <ul style="list-style-type: none"> <li>- Law on VAT</li> <li>- Law on Bankruptcy</li> </ul> <p>It is expected that until mid 2005 at least 40 Law proposals will be submitted for adoption in the Parliament of the Republic of Serbia</p>
<b>3. Adopt and implement the Action Plan for the Removal of Administrative Barriers (<i>focus on implementation capacity and measures</i>)</b>	The Ministry of International Economic Relations has initiated the drafting of an Action Plan for the Removal of Administrative Barriers to Foreign Direct Investment which was adopted by the government on May 27 <sup>th</sup> 2004. This policy paper shall be the core of the Serbian National FDI Strategy	<p>The following laws have been adopted by the Parliament and should help remove administrative barriers to business creation and improve the climate for investors in Serbia:</p> <ul style="list-style-type: none"> <li>- Law on Business Registration. The Law provides for the withdrawal of company registration from the Commercial Courts and for the withdrawal of registration of entrepreneurs from the municipalities, and instead establishes these registries within an independent Agency. Registration shall in this way become simple, quick and inexpensive. There will be only one register for the entire territory of Serbia and it shall be in an electronic format.</li> <li>- Law on Business Registration Agency. The Law provides a legal basis for the new Agency, organised upon the one-stop-shop principle.</li> </ul> <p>The government adopted the Action Plan for the Removal of Administrative Barriers to FDI that will concentrate on a number of implementation measures for increasing the efficiency of business operations and developing the relevant infrastructure. As a next step, the Government will establish the Commission for the implementation of Action Plan.</p> <p>Implementation of the Law on Business Registries by starting the operations of the Business Registration Agency.</p>

## TOP POLICY PRIORITIES IN REGULATORY GOVERNANCE IN THE REPUBLIC OF MONTENEGRO (SCG)

Governance Priority	Context of this priority	Measures planned in order to implement priority
<b>1. Continue the reform and modernization of the Public Administration (capacity of the civil service)</b>	<p>A reformed administration is a prerequisite for the efficient continued implementation of comprehensive reforms, for the establishment of the rule-of-law, protection of human freedoms and rights, as well as for the overall democratisation of the Montenegrin society. In compliance with the Government's Strategy for Reform of Public Administration, one of the priority activities of the Government in the forthcoming period will be the continuation of reform and modernization of the public administration as a whole. The goal is to develop a professional, efficient, responsible and economical administration. Conforming to the Government's Strategy for Reform of Public Administration, in September 2003 the Government started the implementation of the Capacity Building Fund, in cooperation with UNDP and the Institute for Open Society, in order to promote the development of human resources and to strengthen the administration capacities – especially in the area of European integrations. Also, Agency for Human Resource Management is to be set up.</p>	<p>A number of laws have already been adopted in the implementation of the reform: the Law on public administration (2003); Law on civil servants and public employees (March 2004); Law on civil servants' and public employees' salaries (March 2004)</p> <p>Adoption of Law on State Administration</p> <p>Creation of structure and ethic code of civil servants</p> <p>Evaluation and reward of civil servants' work</p> <p>Rationalize administration structure</p> <p>Civil servant training and inter-communication</p>
<b>2. Improve judiciary system (focus on implementation of new laws and implementation capacity)</b>	<p>The basic goals of the reform of the judicial system are: independent and accountable judiciary system ensuring full protection of rights, harmonization of regulations with the standards of the EU and other international institutions, and increasing the public awareness of the judicial functions. By becoming a member of the Council of Europe, conditions have been created for higher instances that enable the protection both of human and property rights.</p>	<p>Basic legal regulations have been passed in the area of commercial legislation and the protection of ownership rights. The Anti-Corruption Agency has been formed as well as the Anti-money laundering Directory, and the fundamental anti-corruption laws and the law against money laundering have been adopted. The on-going reform of the police is based on de-politicizing and civil control of police work – along with an efficient and independent internal control – the relevant laws which have been worked out with Council of Europe pending adoption in Parliament.</p> <p>Further work is now needed to assure that the new legislation is being implemented. The future measures will also include:</p> <ul style="list-style-type: none"> <li>- Reform of the Constitutional framework</li> <li>- Implementation of the new legislation: Courts Law; Criminal Code; Criminal Procedure Code; Law on State Prosecutor; Law on amendments to the Law on execution of Criminal Sanction; Law on Legal Proceedings; Law on Executive Procedure;</li> </ul> <p>In preparation/pipeline: Law on Cooperation with International Criminal Court, Law on witness protection, Law on notaries, Law on Judicial Dues, Law on Legal Assistance, Law on Judicial Exam, Law on Non-Legal Proceedings, Law on Legal Profession</p> <ul style="list-style-type: none"> <li>- Institutional capacity development in courts and related institutions</li> </ul>
<b>3. Simplify administrative procedures (in licensing, import-export and company start-ups)</b>	<p>Montenegro successfully introduced the new Enterprise Law that simplified business registration. The foreign trade law was adopted on March 2004. Still, complicated administrative and bureaucratic procedures exist related to working licenses for entrepreneurs and enterprises and import-export procedures permits and licences which have to be eliminated. Also, the electronic establishment of firms should be introduced.</p>	<p>A number of measures is planned in order to enhance the business environment and trade: The Laws' harmonization with standards and EU laws and the WTO. development of external and internal competition in order to increase comparative advantages of Montenegro, adoption of the set of laws related to mortgage and intellectual property, improvement of administration in commercial courts, implementation of the Restitution Law, completion of the customs system reform including modernization and professionalism of customs servants. In particular it is expected to:</p> <ul style="list-style-type: none"> <li>- Reduce and simplify licenses</li> <li>- Simplify import-export procedures</li> <li>- Facilitate business start-ups through introduction of e-tools</li> </ul>



Annex 1.

**REFERENCE CHECKLIST FOR REGULATORY DECISION-MAKING OF THE  
RECOMMENDATION OF THE COUNCIL OF THE OECD ON IMPROVING THE  
QUALITY OF GOVERNMENT REGULATION**

*(Adopted on 9 March 1995)*

1. *Is the problem correctly defined?*

The problem to be solved should be precisely stated, giving clear evidence of its nature and magnitude, and explaining why it has arisen (identifying the incentives of affected entities).

2. *Is government action justified?*

Government intervention should be based on clear evidence that government action is justified, given the nature of the problem, the likely benefits and costs of action (based on a realistic assessment of government effectiveness), and alternative mechanisms for addressing the problem.

3. *Is regulation the best form of government action?*

Regulators should carry out, early in the regulatory process, an informed comparison of a variety of regulatory and non-regulatory policy instruments, considering relevant issues such as costs, benefits, distributional effects and administrative requirements.

4. *Is there a legal basis for regulation?*

Regulatory processes should be structured so that all regulatory decisions rigorously respect the “rule of law”; that is, responsibility should be explicit for ensuring that all regulations are authorised by higher level regulations and consistent with treaty obligations, and comply with relevant legal principles such as certainty, proportionality and applicable procedural requirements.

5. *What is the appropriate level (or levels) of government for this action?*

Regulators should choose the most appropriate level of government to take action, or if multiple levels are involved, should design effective systems of co-ordination between levels of government.

6. *Do the benefits of regulation justify the costs?*

Regulators should estimate the total expected costs and benefits of each regulatory proposal and of feasible alternatives, and should make the estimates available in accessible format to decision-makers. The costs of government action should be justified by its benefits before action is taken.

7. *Is the distribution of effects across society transparent?*

To the extent that distributive and equity values are affected by government intervention, regulators should make transparent the distribution of regulatory costs and benefits across social groups.

8. *Is the regulation clear, consistent, comprehensible and accessible to users?*

Regulators should assess whether rules will be understood by likely users, and to that end should take steps to ensure that the text and structure of rules are as clear as possible.

9. *Have all interested parties had the opportunity to present their views?*

Regulations should be developed in an open and transparent fashion, with appropriate procedures for effective and timely input from interested parties such as affected businesses and trade unions, other interest groups, or other levels of government.

10. *How will compliance be achieved?*

Regulators should assess the incentives and institutions through which the regulation will take effect, and should design responsive implementation strategies that make the best use of them.



## SELECTED SURVEYS ON INVESTMENT CLIMATE IN SOUTH EAST EUROPE

Name of Survey	Topical Coverage	Country Coverage	Sampling Approach	Frequency	Sponsorship
<b>PICS</b> Productivity and the Investment Climate Survey (PICS)	Designed to link quantitative measures of firm-level costs performance, and provide international, sector-specific comparability. Firm activities; organization; sales and supplies; infrastructure and services; finance; labour; regulation, corruption; conflict resolution; crime; technology and training; productivity information	Serbia and Montenegro. Expected in ECA countries in years between BEEPS II.	400-1500 firms, SME to large, disproportionate stratified random sample within sectors in major cities.	3 to 5 years	WBG
<b>BEEPS I</b>	Broad, with special emphasis on governance, quality of the business environment, competition. Largely perceptual. Comparable to WBG World Business Environment Survey	Albania, Armenia, Azerbaijan, Belarus, BiH, Bulgaria, Croatia, Czech Republic, Estonia, Georgia, Hungary, Kazakhstan, Kyrgyz Rep., Latvia, Lithuania, Macedonia, Moldova, Poland, Romania, Russia, Slovakia, Slovenia, Turkey, Ukraine, Uzbekistan.	100 + firms, structured sample, cross-sectoral, urban-based. Face-to-face interviews with firm managers, owners. 3 years EBRD (w/WB collaboration)	3 years	EBRD and WB
<b>BEEPS II</b>	Successor to BEEPS II. Broad, like WB ICS, thus more emphasis on costs vs. perceptions, but with additional questions on governance and industrial structure, without certain detailed questions on firm productivity and regulation.	Albania, Armenia, Azerbaijan, Belarus, BiH, Bulgaria, Croatia, Czech Rep., Estonia, FR Yugoslavia, FYR Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkey, Ukraine, Uzbekistan	150 firms +, structured sample, cross-sectoral, urban biased	3 years	EBRD and WB (PREM)
<b>ARCS: Administrative and Regulatory Cost Survey</b>	Evaluates compliance costs of major regulatory/admin. Processes, breaking down into key steps. Costs include days of delay, staff time required, official fees, facilitation costs and unofficial payments.	Albania, Armenia, Azerbaijan, Bulgaria, Bosnia & Herzegovina, Belarus, Georgia, Croatia, Kazakhstan, Latvia, Macedonia, Mozambique, Romania, Russia, Yugoslavia (Serbia and Montenegro).	Typically 400+ firms, cross-sector, multiple cities, stratified or structured.	Periodic	FIAS, sometimes in collab'n w/ WBG
<b>EWS: Early Warning System</b>	Questionnaire typically covers business permits/licenses, inspections, and permits to occupy business premises.	Planned for most ECA countries	Typically focus group plus small survey.	Every 6 months	WB ECFPS
<b>EPPA: Enterprises Policy Performance Assessment</b>	Designed to assist countries in South East Europe to become more competitive by stimulating entrepreneurship and enterprise development. The country assessments provide policy makers with a comprehensive assessment and policy recommendations in relation to the small enterprise sector. EPPA focuses on seven key issues: institutional development; regulatory framework; tax system; access to finance; advisory services; business incubators; entrepreneurship and training, and is consistent with the EU Charter for Small Enterprises (EC/DG Enterprise, 2000).	Albania, Bosnia and Herzegovina, Bulgaria, Croatia, FYR Macedonia, Moldova, Moldova, Romania, Serbia and Montenegro, and a regional assessment	Focus Groups and Expert Interviews with core emphasis on small business views and feedback	Every Year	OECD EBRD EC – DG Enterprise

Source: For more information, see also: Investment Climate Surveys and Diagnostics in the Eastern Europe and Central Asia Region Andrew H. W. Stone. For information on EPPA, see <http://www.investmentcompact.org>



*Annex 3.*

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